

INTERNATIONAL  
JOURNAL OF

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IJPT

POLITICAL THEORY

**Volume 2 | Number 1 | Summer 2017**

EMERTEC

***International Journal of Political Theory | Vol. 2, No. 1 2017 | ISSN: 2371-3321***

Published by Emertec Research and Development - [www.ijpt.ca](http://www.ijpt.ca)



*International Journal of Political Theory is published by  
Emertec Research and Development, Ltd.*

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#### Publication Indexing Data

Digital Indexing: Library and Archives Canada  
Publisher registration: Crossref, Website: [www.crossref.org](http://www.crossref.org).  
DOI: 10.22609  
ISSN: ISSN 2371-3321



*Published by Emertec Research and Development, Ltd., Halifax, Canada.*

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ISSN 2371-3321*

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# INTERNATIONAL JOURNAL *of* POLITICAL THEORY

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Vol. 2, No. 1 | August 2017

VOLUME TWO

Editor: Jaan S. Islam

# International Journal *of* Political Theory

**VOLUME 2, NO. 1**

**AUGUST 2017**

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## About the Journal

The International Journal of Political Theory is a Canadian-originated open access journal looking to expand the scope of political theory, discover, and comment on current discourse in the fields of political science, international law, philosophy, sociology, and economics. The scope of the journal tackles the key problems the new world faces, and offers a unique perspective; global political phenomena through the lens of how all of the recurring observations fit into theoretical constructions, and what implications they have on moral, economic, societal, and physical terms. It welcomes unorthodox and provocative new arguments. The team is especially inclined towards the introduction of new theoretical compositions and observations; groundbreaking arguments combining the several fields the journal overviews.

The nature of the journal is multi-disciplinary; in fact, multi-disciplinary studies are highly encouraged, and the journal hopes to—as opposed to mainstream journals in political theory—fix the major methodological and cognitive ills of the field that are diagnosable through experience and study in multiple disciplines. As the reader is well aware of, economics, politics, law, and all other fields of social study overlap each other, especially in the globalized world we face today. Political theories are rarely isolated from their "non-political" sciences. For this reason, instead of the IJPT being a specialized journal having a single source of ideological stream, it hopes to be a database of a wide range of foundational, interdisciplinary theories revolving around the subject of the numerous sciences listed above. What is important for the editorial team is the uniqueness and provocativeness of the contribution: the IJPT is meant to be a journal for provocative, ground-breaking discoveries and theories.

All in all, the editorial board of the *International Journal of Political Theory* is proud to present this multi-disciplinary theory journal to all seekers of knowledge. All papers are guaranteed to offer new and interesting perspectives on the fields in question.

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## *Editorial: Contemporary World Problems and New Perspectives*

Jaan S. Islam  
Dalhousie University

I have titled the name of this volume’s editorial “Contemporary World Problems and New Perspectives,” not as a standard cliché term meant to apply the typical journal, but rather because in trying to determine the commonality of the articles in this volume, it became clear to me that 2017 represented a new way of thinking in the entirety of the field of political thought. Be it the introduction of the metaphysical into political thought in the context of the new science and post-truth era, or suggesting solutions to agonistic conflict in 21st century Europe, this year’s contributions to the *International Journal of Political Theory* are unique and well-suited to comment on what has been termed the ‘post-truth era’ following the election of Donald Trump as President of the United States.<sup>1</sup>

Perhaps most timely addressing the subject of current events in United States politics and their meaning from the perspective of a political philosopher, the paper “A Theory of Humanity: Part 2—Conditions for True Universalism” is the most notable.<sup>2</sup> M. R. Islam and his team address normative political thought from the perspective often ignored (especially) in the western political tradition: the metaphysical. They boldly argue that the only way to ensure the logical consistency of a normative model of government is by assuring that it is compliant with other logical truths, which include metaphysical truths. It castigates the western political tradition for separating the practical from the metaphysical (i.e., religion and politics) and advocates for a political system derived from one source of truth. More importantly, the paper aptly addresses the notion of absolute truth, defending it against the ‘post truth’ era which in fact started long before Trump’s election to office (actually, the very start of the western political philosophical tradition). On the other hand, taking a radically different response to this same ‘truth crisis,’ Ajishafe’s analysis<sup>3</sup> of Boko Haram from the perspective of (adapted) Freudian analysis signals a change in the philosophical-political spectrum. We are no longer searching for a ‘single’ true explanation when we examine the world’s problems; rather, we are opening ourselves up to new, creative perspectives into the study of political phenomena.

Considering this, Laura Henderson's article on agonistic conflict<sup>4</sup> could not be more timely. Henderson discusses the use of agonistic, 'us versus them' conflict in contemporary European political discourse, and analyses how, amongst other things, political parties attempt to change the rules of the 'democratic game' in order to level critiques at the systems they oppose while still maintaining perceived philosophical legitimacy. How about when these non-facts, or disputed truths become an issue in the actual *practice* of politics (i.e., actual politics)? On this note, Roberto Mancilla<sup>5</sup> gives us a legal insight into the meaning changing attitudes has for most democratic countries. His analysis of constitution-making in countries with independent judiciaries explain how besides lawmakers themselves, the judiciary in fact plays a central role in shaping and defining what is considered acceptable through constitutional interpretation.

I end this editorial without actually addressing the solutions they offer — this requires a much more detailed read, each of which needs to be independently considered from all disciplines of political science. These articles not only contribute to the current state of knowledge, but also to the most pressing questions in political thought today.

## Notes

<sup>1</sup> James Der Derian. (2017 May 30). Trump demands a post-post-truth response. *The Conversation*. Retrieved from <https://theconversation.com/trump-demands-a-post-post-truth-response-77563>.

<sup>2</sup> M. R Islam, A. O. Islam, G. M. Zatzman, Barry Grossman. (2017). *International Journal of Political Theory* 2(1), 89-121.

<sup>3</sup> Babajide I. Ajishafe. (2017). "All The Things We Could [Se]e by Now [Concerning Violence & Boko Haram], If Sigmund Freud's Wife was Your Mother": Psychoanalysis, Race, & International Political Theory. *International Journal of Political Theory* 2(1), 11-37.

<sup>4</sup> Laura M. Henderson. (2017). Speaking Crisis in the Eurozone Debt Crisis: Exploring the Potential and Limits of Transformational Agonistic Conflict. *International Journal of Political Theory* 2(1), 38-63.

<sup>5</sup> Roberto Mancilla. (2017). A Theory of Judicial Constitutional Design. *International Journal of Political Theory* 2(1), 64-88.

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DOI: [10.22609/2.1.1](https://doi.org/10.22609/2.1.1)

# "All The Things We Could [Se]e by Now [Concerning Violence & Boko Haram], If Sigmund Freud's Wife was Your Mother": Psychoanalysis, Race, & International Political Theory

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University of Missouri –Kansas City

## ABSTRACT

In response to the sonic media and ludicrosity of her time, Hortense J. Spillers' paradigmatic essay ""All the Things You Could Be by Now, If Sigmund Freud's Wife Was Your Mother": Psychoanalysis and Race," transfigures Charles Mingus' melodic, cryptic, and most puzzling record title into a workable theoretical cacophony. Closely written within the contexts and outside the confines of "some vaguely defined territory between well established republics," Spillers is able to open up the sarcophagus of meaning(s) within the Black occupation of the psychoanalytic discourse. Mingus' original assertion, *"all the things you could be by now, if Sigmund Freud's wife was your mother,"* means absolutely nothing insofar as it means everything in the face of constructed openings and invitations into "extending the realm of possibility for what might be known." As such, this article asks a similar question relating to what might be known about the sensual convergence of media, violence, and representation ('all the things we could *see* by now') of international, political, and theoretical significance. If anything, Spillers and Mingus compel us toward locating some semblance of forgotten relationality between what appears to be abstract, distant, and unfamiliar. Given our contemporary era of violent post-colonial terror and desires for alternatives to the afterlife of slavery, this article endorses the free-floating investigation into the live survey of unprotected human flesh in the specific case of Boko Haram's explosion in modern media. Is it possible that such a study is able to uncover the motive behind the assembly of spectatorship? Through a Freudian reading of human nature into international political theory, this article indicates that narrative formation and transmission is an essential component to the development of both ethno-universalisms and global constructions of race and captivity.

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**Keywords:** Sigmund Freud, Psychoanalysis, Black Studies, Hortense J. Spillers, Political Theory, Boko Haram, Terrorism, Race, Media

## 1 Introduction



Picture 1. Michelle Obama, *twitter post, associated press*, 7 May, 2014.

The post-political has everything to do with the way exposed flesh, human carrion, and cropped bodies traverse along the horror scenes that comprise the foreground of international relations, the middle ground of international law, and the background of international discourse<sup>1</sup>— an animation suspended only by the absolute "end of politics" itself.<sup>2</sup> In theory, something terrible is happening that demands an intervention into an already familiar concept of the cosmopolitan. Without question, the global city is governed by a problematically imperial axiom that seeks "to create a global legal tradition *based on a world where there are no set standards*."<sup>3</sup> However, in our contemporary moment, we have come to experience a kind of exercised geo-governmentality (*that exceeds and anticipates partitioned geographies*).<sup>4</sup> This article takes an epistemological detour from (international) political theory's normative approach by investigating the "forms of force and pressure"<sup>5</sup> that *instead*, take the shape of uncanny feelings, sentiments, and

performances of human nature toward the consolidation of the cosmopolitan personality. Might such a dangerous and uncertain assertion that '*I feel, therefore the cosmopolitan feels*' take us back to Freudian fallacies of composition once previously exposed?<sup>6</sup>

Something about this photograph rings deeper than "international protest" to gender-based political violence.<sup>7</sup> Something about this photograph of Michelle Obama's objection to the kidnaping of 300 Nigerian schoolgirls by Boko Haram makes the assault feel so personal, so natural, so painful. I spent months trying to figure out why the cosmopolitan was so invested in the unbridled transmission and circulation of terrorist narratives— documented by the extreme violence and bloody transactions of Boko Haram. What kind of explanatory testimony (if any) could realism and international political theory provide for the world's fascination with not just the political horrors of "life exposed to death,"<sup>8</sup> but also with "scene[s] of *actual* mutilation, dismemberment, and exile."<sup>9</sup> By casting an *endarkened* Freudian "application to practical problems of political research and political practice,"<sup>10</sup> and reading into the contours of what "was *perhaps* the first [foregrounding of] the distinctive nature of the uncanny,"<sup>11</sup> we learn that these stories of terror exist because there is a need to create glimpses of western/American ethno-universalisms<sup>12</sup> of self/identity/ego that is in constant juxtaposition to a terribly troubled other.<sup>13</sup> This article seeks to decode the human nature related to the geopolitical spectatorship associated with the presentations (images, stories, videos, & new media technologies) of gruesome affairs of violence by non-state actors (Boko Haram specifically). In four parts this article faithfully relies on the critical work of philosophy, legal studies, international relations & political science, gender studies, literature & literary criticism, performance studies, post-colonial studies, and Black/African-American studies. In part two, I will address the relevance of and literature on race and the post-colonial context in order to better understand the origins of a theory of violence. In part three, we will then explore the potentials of inviting Freud (back) into international political and race theory. Part four will survey the figuration of Boko Haram's transformation into *flesh* and Part five will finally explore American press as a case study to understand the range and impact of the shocking and terrible stories of Boko Haram's expedition.

## 2 "Concerning Violence": What You See<sup>14</sup> ~~Is What You Get~~

Virtually all comprehension in science, technology, and even art calls on our ability to visualize. In fact, the ability to visualize is almost synonymous with understanding. We have all used the expression "I see" to mean, "I understand."<sup>15</sup>

What does it mean to not only *see* violence, but to understand it? Most tempting for any (political) theory concerning violence (concerning the "dark continent") is the auto-interpolative gesture that tethers Africa so intimately to "the notion of "absolute otherness,""<sup>16</sup> that it is always already implicated in the violent extractive political institutions that comprise the modern world.<sup>17</sup> More tempting however, is the misreading of the post-colonials' seemingly romantic study of violence, or the refusal to study the thing before the 13th century —an analytic misrecognition of slavery and colonialism as *post festum* iterations of an assumed original context for, "our contemporary world[s]...destruction of persons and the creation of *death-*

*worlds.*<sup>18</sup> Recognizing the diversity of violent conflict on the continent (including "a war between European powers [that] played out on African soil" between 1914 and 1918) *before* slavery and colonialism often requires a historiography beyond the scope of political theory and even sociology.<sup>19</sup> As such, the methodological starting point for this study is predicated on the ways in which "we write and think ...under the pressure of those events"<sup>20</sup> of cataclysmic shifts in populations and epic distortions of flesh in peril.

And what we see plastered all over our timelines, news feeds, and broadcastings, typifies the alibi, scapegoat, and closure required for the sustained work of international relations and the execution of a global *Law of War*. It implies an erroneous yet general and seemingly benign theory of violence that hijacks all discourses and principles of reason that make it difficult to explain away:

#### Violence is provoked between sovereigns

Yet, few (if any) provocations of race, slavery, imperialism, and colonialism have surfaced in the context of what we continue to bare whiteness to in the name of Boko Haram. It appears that the international read on the events that continue to claim the lives of individuals bound to topographies zoned out of history by his authors,<sup>21</sup> fails to resonate in the same way that the Manichean drama<sup>22</sup> of the 17th century in Africa did—a diachronic catastrophe that quite plainly "[questions] the very humanity of colonized peoples."<sup>23</sup> Simply, it appears as if the events of Boko Haram bear no synchronic/diachronic relation to the "the initiative strikes which open the Atlantic Slave Trade in the fifteenth century of our Christ."<sup>24</sup> Put another way, Black Africans killing Black Africans on live TV and on HD Internet appears to have nothing to do with questions of race and its business with international political theory. Yet on the contrary, Mbembe writes, "any historical account of the rise of modern terror needs to address slavery,"<sup>25</sup> precisely because its juridical eradication exposed the colony to the right of bodies (especially non state actors) to excise life in order to establish biopolitical sovereignty. This article departs from the post racialism that characterizes international relations in accepting, as fact, a phenomenological claim about the post-colonial:

It is the moment of the boomerang; it is the third phase of violence; it comes back on us, it strikes us, and we do not realize any more than we did the other times that *it is we who have launched it* [...] In the colonies it is the policeman and the soldier who are the official, instituted go-betweens, the spokesmen of the settler and his rule of oppression... The intermediary does not lighten the oppression, nor seek to hide the domination; ... yet he is the bringer of violence into the home and into the mind of the native.<sup>26</sup>

What remains of the colony and the flesh it left behind does not merely disappear into thin air as international relations, declarations of independence, and political theory would have it. There persists a complex historical, anthropological, and cultural milieu that is able to articulate why violence continues after the lives of salvers and settlers are spared into the New World.

Frantz Fanon's pessimistic insight on the natural order of things, suggest that the violence we see in the former colony like Nigeria is but an expression of this current moment that Jean-Paul Sartre termed 'the boomerang'—the return on the investment of an original assault. To be more specific, the human flesh<sup>27</sup> in Nigeria, overcome by their corporeality and physiological solidity, exemplify the permutation of technologies of race, biopower, and colonialism à la carte. Not only are they a return on investment and intermediary war machines of the positive/normative force that turned their captive bodies into flesh, "to properly assess the efficacy of the colony as a formation of terror, we need to take a detour into the European imaginary itself as it relates to the critical issue of the *domestication* of war."<sup>28</sup> The violence on the colony, imported into the colony by constructions of race, have fermented into particular "ways of killing... whose bodily integrity has been replaced by pieces, fragments, folds, even immense wounds that are difficult to close." As we will later understand, these ways of killing are kept alive only through "the morbid spectacle of severing,"<sup>29</sup> and the absolute *raw life*<sup>30</sup> that "the petrification of the bones and... their stubborn will to mean, to signify something."<sup>31</sup>

### 3 An *endarkened*<sup>32</sup> Freud & the Psychoanalytic

"[The author] deceives us into thinking that he is giving us the sober truth... by the time we have seen through his trick it is already too late and the author has achieved his object ... We retain a feeling of dissatisfaction, a kind of grudge against the attempted deceit... It is this, that he should keep us in the *dark* for a long time about the precise nature of the conditions he has selected for the world he writes about."

—Sigmund Freud, 1919<sup>33</sup>

There are two assumptions that orient my attempt at a narrow Freudian reading of international political theory and narrations of terror—one related to the personal/political dichotomy, and the other related to the racial bearings of the uncanny<sup>34</sup>/the double. To the extent that politics, governmentality, and international relations retain its primary utilitarian sensibility, one ought to expect that the scope of all theoretical inquiry remain loyal to standards of universality, collectivity, and values of majoritarianism. That, when Martin Wight in *International Theory* suggests that "all political theory presupposes some kind of theory about human nature, some basic anthropological theory," he is still referring to an anthropological condition corresponding to the grand sum of "mankind."<sup>35</sup> Robert Schuett's convincing and theoretically robust challenge to the "disavowal of the concept of human nature [that] has helped to impoverish political realism," in his important work *Political Realism, Freud, and Human Nature in International Relations*, invites the kind of scandalous crossings of boundaries in political research and analysis like the one contained in this article.<sup>36</sup> By locating Freud and the concept of human nature as "the sole philosophical starting point for international-political theory,"<sup>37</sup> the shift in focus toward "inward-looking and self-contained politics of psychoanalytic theory and practice,"<sup>38</sup> compels a narrow and refined (*almost literary*) application to issues of international significance like terror.<sup>39</sup> This first assumption —whose intention is to usher theory away from the fallacy of composition—may be misguided. There may stand a chance that the object of international political inquiry also (much like race) "inhabit[s] intersecting axes of relations that banish once and for all the illusion of a split between "public" and "private"."<sup>40</sup> If we forgo the caveat of leaving all things personal to the work of the clinician and largely untouched by

political theory (except for my cautionary narrow reading of Freud here), then Spillers' observation that "psychoanalytic insights" have been "transported into the fields of feminist and critical inquiries," also rubs my deep intuition.<sup>41</sup> I am suggesting that a psychoanalytic practice to the work of international political theory becomes transversive in its endorsement of the "cosmopolite's"<sup>42</sup> demand to aggregate the personal feelings and responses of the international political world.

Similar to W. E. B. Du Bois and E. Franklin Frazier's dilemma with the Moynihan report,<sup>43</sup> Sigmund Freud is not the first to *name* the uncanny and the auxiliary substance that gives it logical clarity (Freud's articulation of the function of 'the double'). Freud, like any other author of fiction he studied, did what he saw as necessary work in keeping "us in the *dark* for a long time about the precise nature of the conditions he has selected for the world he writes about." While "the three Lacanian dimensions"<sup>44</sup> exceeds the scope of this article, Freud's absence of Black naming (*endarkening*) his work on the uncanny, inevitably swerves away from race only to return back to it in the

Symbolic order, [where] the register of subjectivity in which naming most fundamentally takes place. Although names are signifiers that slide and slip meaning, names can also carry an indexical force that exceeds representation. That probably sounds really fancy, but it is really just to say that names index the power of the namer to fix meanings, and it is what Slavoj Zizek calls "the radical contingency of naming" (Žižek and Laclau 107). They leave the haunting presence of the original Namer as such, because they indicate a structural relation that tends to fix the thing named. Names are therefore forever haunted by their arbitrariness, their belonging in a network of associated signifiers or traumas, such as Sigmund Freud delineated in "The Forgetting of Proper Names."<sup>45</sup>

As such, Freud's "distinctive nature of the uncanny and the double," written in 1919 contains strangely familiar trances in content to the Black foundational text, *Souls of Black Folk* by Du Bois published in 1903.<sup>46</sup> Though Du Bois is speaking about the Negro within the North American context, his argument about double-consciousness is not only related to (perhaps responsible for) Freud and Spillers' argument about doubling, but has without question inspired a host of theoretical, critical, and cultural work relevant to schools of political and psychoanalytic reach internationally.

Literary, as Toni Morrison would indicate, Du Bois can be understood as a kind of "black surrogacy—an informing, stabilizing, and disturbing element" to the assumed original Freudian construct of 'the double'.<sup>47</sup> If W. E. B. Du Bois could launch the fact of "double consciousness" with an assumed originality (borrowing his terms from the early works of "William James, who possibly introduced the term to Du Bois at Harvard, [exploring] the idea of double consciousness in *The Principles of Psychology*, and in the English translation of the 1983 German text of psychologist Oswald Külpe"<sup>48</sup>), then it is appropriate that I help to shorten "the vast distance between" Black scholarship and "the science of psychoanalysis."<sup>49</sup> Or, to evoke the work of Fred Moten and Stefano Harney on Black study, I will borrow from Freud "as he would surely borrow from us."<sup>50</sup> In order to come to terms with problematizing psychoanalytic discourse, the essays

of Hortense Spillers and Arnold Rampersad are integral to my study.<sup>51</sup> Overall however, my understanding of the problem of race and psychoanalysis hovers under the devastating work of Frantz Fanon's *Black Skin, White Mask*.<sup>52</sup>

I want to momentarily depart from the status quo's deployment of *Black Skin, White Mask*<sup>53</sup> and entice a different take on race and the psychoanalytic. Different from Fanon's fatalism that has impacted the prevailing work of race and psychoanalysis (especially Spillers in the very essay that would inspire my own investigation, "'All the Things You Could Be by Now, If Sigmund Freud's Wife Was YourMother': Psychoanalysis and Race," and Frank Willderson's ground breaking text in the new school of Afro-Pessimism *Red, White & Black: Cinema and the Structure of U.S. Antagonisms*), we must also follow his deeply passionate insistence on understanding the erotic compulsion to project visions of the not yet Symbolic order. To the political theorist, Fanon has everything to do with the normative production of alternative sociality. As we have encountered Boko Haram's ability to cast an alluring narrative replete with absolute wretchedness and decay, Fanon concludes with what might be a call to action and representation located everywhere in "the place, for example, of fantasy, desire, and the "unconscious," of conflict, envy, aggression, and ambivalence in the repertoire of elements that are perceived to fashion the lifeworld."<sup>54</sup> This can most simply be defined as the ability or practice to create an idea of a utopian world that escapes the present; a world that does not exist. Politics then, is the praxis to actualize that vision. A radical possibility of ideations that transcend the status quo:

The idea that we could possibly go somewhere that exists only in our imaginations—that is, "nowhere"—is the classic definition of utopia.... The map to a new world is in the imagination, in what we see in our third eyes rather than in the desolation that surrounds us... Imagining a different future than being pissed off about the present... that the *dream of a new world*...for... political engagement. [...] What kind of world they wanted to build if they did win. [...] A collective imagination shaped and reshaped by the very process of turning rubble and memory into the seeds of a new society.<sup>55</sup>

While Kelly's definition is precise, intuitive and consistent with the literature, it is incomplete. Returning to Frantz Fanon and his notion of "collective catharsis,"<sup>56</sup> we are able to come up with a more theoretically robust and contextual formulation for the normative process of counterfactual construction.<sup>57</sup> By "actively" releasing "collective aggression," we turn things like "The Tarzan stories, the sagas of twelve-year-old explorers, the adventures of Mickey Mouse, and all those "comic books",<sup>58</sup> as phantasies of our own construction. Fanon's "By Way of Conclusion" in *Black Skin, White Masks* is also constructive here in what he "calls the disalienation of all humanity" which "requires imagining a future that is not like the past."<sup>59</sup> While many scholars (*toward pessimistic and fatalistic reflections on Black social life/death*) seem to bypass this *vital* reading and Fanonian revelation on futurity, historical betrayal, and "prayer" (transcendentalism), Kelly Oliver's innovative chapter "Humanism Beyond the Economy of Property" in *The Colonization of Psychic Space: A Psychoanalytic Social Theory of Oppression*, is an excellent filter through which we "attempt to touch... this study"<sup>60</sup> (to borrow the erotic language of Fanon) on utopia. An endarkened psychoanalytic is one that recognizes

the way that race and blackness always already 'troubles the text'<sup>61</sup> of classical psychoanalysis. It then becomes imperative that we read the horror stories under the assumption that:

with regard to Fanon, ... wretchedness emerges from a standpoint that is not only not ours, that is not only one we cannot have and ought not want, but that is, in general, held within the logic of im/possibility that delineates what subjects and citizens call the real world.<sup>62</sup>

#### 4 "Break[ing] Though in *Blood & Disfigurement*<sup>63</sup>: Boko Haram in the Flesh

"The hallmark of terror is not so much the depiction of pain and violence, but the transfer of violence from the land of adventure to the reader's own vulnerable and unstable state of mind."

—Ed Morgan, 2002<sup>64</sup>

Surely, as the cameras turn on and focuses in on the violence, the spectator is thinking, reminiscing, indulging, and constructing ideations of personhood. While it may be true that "you aren't able to identify or name the face of the boy looking out at you,"<sup>65</sup> you learn to fill in the gaps as you realize that the camera lens is also a mirror, a reflection, and a double of the photographer. Any picture can be you because "the self [is] the schizophrenic, hallucinatory, presence of another. But today, the voice you speak with may not be your own."<sup>66</sup> These stories of terror exist because there is a need to create a hegemonic self/identity/ego who is in constant juxtaposition to a terribly troubled other. Within a rich philosophical and academic tradition, this process has been termed American Africanism, doubling, and double consciousness by Toni Morrison (1992), Hortense Spillers (1987), Sigmund Freud (1919), and W. E. B Du Bois (1903) respectively. Put another way, Anna Agathangelou writes that "blackness... is precisely what makes the rest of the world legible; the non-radicalness of Africans... is the foil against which 'the West' and whites measure their legitimacy and value."<sup>67</sup> Morrison as wells as Mbembe suggests that this motif has pedagogical implications through "the denotative and connotative blackness that African peoples have come to signify."<sup>68</sup> Spillers and Freud are helpful in understanding this construction of a "foil" through caricatures of terror and 'the uncanny.' Freud indicates that we create these narratives through the figure of the "double"<sup>69</sup> (and thus, feelings of uncanniness) because of the fear of 'self destruction.'<sup>70</sup> The figure of the double becomes a fungible safeguard ("insurance") against the risk that the self or "ego" (American Identity/Imagination) might become 'extinct.'<sup>71</sup>

This process of identity construction also happens at the level of the spectacle. It is not just the *seer* whose identity is being constructed in the double process of narrative transmission but also the *seen*. In this case, the African object of our ocularcentrism occupies a liminal space in which their ontological status becomes flattened:

*As soon as I entered the United States, my otherwise complex, multidimensional, and rich human identity became completely reduced to a simple, one-dimensional, and impoverished nonhuman*

*identity*. I am saying, in other words, that to become "black" in the United States is to enter a sphere where there is no differentiation, no distinction, and no variation.<sup>72</sup>

Written by a Nigerian man named Olúfémí Táíwò, this too is the fate of the countless characters that play their role within the story of Boko Haram. The complexities of their "authentically" African or Nigerian lives are disfigured and diluted through violent acts of naming, where captive bodies are turned into flesh (Spillers). It is through this process that the rigid lines partitioning populations and geographies become less permanent, fixed, and definitive. Individuals begin to cross borders without the intention of becoming Black, with no demographic category "box" to check, no doted line to sign, and no time or venue to deliberate over chosen and given identities. Like Táíwò, these Nigerian creatures of our imaginations "BECAME BLACK!"<sup>73</sup>

Part of this process is codified through (imagi)native<sup>74</sup> and primal venues like mainstream Black media. For example, the imaging of Black Entertainment Television (BET) in the special broadcasting, *Stolen Innocence: Your Daughters Are Our* (2014),<sup>75</sup> hints at locating and rupturing the "Us/them" dichotomy, activated by an orientalist cognition of communal separation.<sup>76</sup> By implicating America within the regime of violence against Black women and girls within the sex-work industry, the commentators (through analogy), familiarized the kidnaping of the 300 Nigerian schoolgirls. The phenomenon of #BringBackOurGirls became removed from its local/original/African context in such a way that the name Ibrahim Abdullahi becomes largely irrelevant.<sup>77</sup> Expectedly, interviews of the Nigerian girls who were able to escape the grasps of Boko Haram (MSNBC), naturally identified them as "Black women"—with a political vernacular akin to American and Black feminist sensibilities. The scene that introduced their live identities (*The Mellissa Harris-Perry Show*) is also telling to how social and political discourses would read these girls as "Black" and not necessarily as "African" or "Nigerian."<sup>78</sup> This process of exchange (the 'African' for the 'Black) not only "provides a metaphor of displacement for other human and cultural features and relations," but Hortense Spillers also suggest that it is symptomatic of the purging of the semantic/cultural "baggage" Americanizing forces need not bear.<sup>79</sup>

Beyond the erasure of what might have disqualified the "African" from the captivity of "blackness," perhaps the evidence and testimony of injury, wound, or tort, offers the alluring possibility of justice and civil liability. Or, as Raymond Guess prefaces in *Politics and the Imagination*, "wrongdoers may seem invincible now, but eventually they will pay" *after* the jury hears my account of what happened.<sup>80</sup> —Oh, and I have all the gory details that will surely make their skin crawl. These terror(ble) stories take the shape and form of severe dismemberment. Freud provides a general basis for substantiating the position that narrations of terror (which produce feelings of uncanniness) rely on the process of severed limbs:

Dismembered limbs, a severed head, a hand cut off at the wrist, feet which dance by themselves—all these have something peculiarly uncanny about them, especially when, as in the last instance, they prove able to move of themselves in addition. As we already know, this kind of uncanniness springs from its association with the castration-complex. To many people the idea of

being buried alive while appearing to be dead is the most uncanny thing of all. And yet psychoanalysis has taught us that this terrifying phantasy is only a transformation of another phantasy which had originally nothing terrifying about it at all, but was filled with a certain lustful pleasure—the phantasy, I mean, of intra-uterine existence.<sup>81</sup>

This passage is also reminiscent of Hortense Spillers' discussion of the "captive body," which adds another theoretical layer and substantiation to my argument about the process of 'objectification' and "doubling." Like Freud, Spillers also suggest that "social" and "cultural subject make doubles" in a way that wholly relies on the production of "scene[s] of *actual* mutilation, dismemberment, and exile."<sup>82</sup> While Spillers' "double" figuration is specific to gender,<sup>83</sup> Spillers' bifurcated "captive body"<sup>84</sup> endarkens —*which is to say racializes*—Freud's formulation in such a way that an application to Boko Haram becomes possible. This captive body is created, imaged, and circulated in a twofold process 1) by "atomizing" the flesh into compartments whereby the African body becomes non-human object in juxtaposition to the New World human-subject and 2) by irresistibly surveying these "small portions of the flesh" as a kind of spectacular "pornotroping."<sup>85</sup> To the point of the question, *what drives the creation and transmission of terrorist narratives* Spillers merely extends on the answer that Freud gives us (doubling) with an explicit and layered contextualization of African corporality (i.e. the captive body).

Generalized by Freud and then racialized by Spillers, the narratives of terror take on the *form* of severe bodily disfiguration (the acts of Mbembe's war machines). The drama of Boko Haram displays *actual* live senses of mutilation that "take on the objective description of laboratory prose-eyes beaten out, arms, backs, skulls branded, a left jaw, a right ankle, punctured; teeth missing, as the calculated work of iron, whips, chains, knives, the canine patrol, the bullet."<sup>86</sup> Like Freud suggests in his discussion about how "dismembered limbs... have something particularly uncanny about them," Spillers offers the connective tissue necessary to explore its application to Boko Haram, as a breeding ground for the formation of confounded identities. It is my suggestion that through the deployment of American Africanism (Morrison) and the double/uncanny (Freud), these narratives and images of Boko Haram's terror merely restage the position (or motif) of the captive body, as we live in the historical moment that is the afterlife of slavery. This episode is merely a different manifestation of an old and peculiar institution—a *new* event for those who subscribe to the mainstream, ethno-universal, or "white" identity, and a dated one for those forced into an ascribed Black identity. Upon quickly exploring the trail left by Boko Haram (enabled by the memory of new media), the process of restaging the disfigured captive body within an African context could not be any more clear.

New media (mainly internet news stories) is scattered with gruesome depictions of the aftermath of Boko Haram's episodic voyage through northern Nigeria. It is also important to note that in some cases, we can even see Nigerian civilians' retaliating in leaked 3 second videos; hacking away with sticks at what is left of the bodies of Boko Haram members. The caption of this video (available in HD) reads "After the botched assault on Maiduguri, Borno by Boko Haram on February 1<sup>st</sup>, 2015, residents of the city vented their frustration on the corpses of the fighters who

were killed.<sup>87</sup> Other mainstream American news carriers like *The Huffington Post* also used the language of "dismemberment,"<sup>88</sup> which are too numerous to actually cite here. Most terrible however are the literal photographs of severed limbs placed beside each other in the aftermath of suicide attacks in various news stories and blogs.<sup>89</sup> Even peer-reviewed articles are enamored with the motif of 'dismemberment' as one article hyperbolically asks the question, "To what extent has Boko Haram dismembered Nigeria?"<sup>90</sup> So, if Boko Haram is not only dismembering bodies but also whole counties, then it is not a surprise that I read Spillers all over this travesty; "written in blood, [which] *represents* for its African and indigenous peoples a scene of actual mutilation, dismemberment, and exile."<sup>91</sup>

## 5 American Media & The Rest of the World

Mainstream American media is a tricky game to decipher. Why some stories get pulled and others do not is a classic question asked by the ones forced into conspiring their own answers. The ones who print off news stories and archive messy news paper clippings in the fear of their disappearance from public record. "Sometimes the story is not clear, or it starts in a whisper" because "this knowledge has been degraded, and the research rejected."<sup>92</sup> Tracing the inception of Boko Haram, a terrorist group based in northeastern Nigeria is especially tricky because, "it is also not impossible that the Boko Haram sect was just one facet of the multifaceted and well-linked fundamentalist *movement*, the true extent of which has yet to be fully determined."<sup>93</sup> What we do know however is that violent challengers of the Nigerian state began to surface with the use of force before "1999 when the country returned to multiparty democracy."<sup>94</sup> Expectedly, violence did not just erupt out of thin air when the United States finally decided to begin reporting on the crisis of the *erroneously reported* "five-year insurgency in Nigeria."<sup>95</sup> US news carriers like the *Associated Press*,<sup>96</sup> *United Press International (UPI)*,<sup>97</sup> *New York Times*,<sup>98</sup> *Washington Post*,<sup>99</sup> and the *Daily News*<sup>100</sup> began their reporting in small series throughout the years of 2007, 2009, 2010, and 2011 respectively. What makes tracking the paper trail of Boko Haram much more difficult is the fact that

From what is available, however, it would appear that the group has been around for some time, as long as ten or fifteen years, and had operated under different names in the past. Such names included Ahlusunna wal' Jamma Hijra; the Nigerian Taliban; and the Yusufiyya (Fasure 2009: 2; Omipidan 2009b: 48; Sunday Tribune 2009).<sup>101</sup>

While my research is incomplete in surveying the entire U.S. press industry's reporting of Boko Haram, we *can* conclude that the reporting did *not* begin in the summer of 2014 — with the national sensation of the 300 kidnaped schoolgirls in (characterized by the #BringBackOurGirls campaign), followed by Boko Haram's 'deadliest' massacre of 2000 civilians in Baga, Nigeria carried out early 2015.<sup>102</sup>

Despite public outcry for more media attention on the violence of Boko Haram and the criticism of international apathy,<sup>103</sup> the United States' reporting has not been completely lacking and reports have certainly been recorded.<sup>104</sup> The story carried a palpable resonance of the kind of

gross terrorism that the United States waged war against in 2001. Or, to echo the words of the provocative and daring photojournalist Glenna Gordon, "some critics and media pundits have complained that the massacre hasn't been sufficiently, or even substantively, covered by the Western media. That simply isn't true: every newswire has run stories and updates, and every newspaper has written copy."<sup>105</sup> In light of this, this section looks to understand why we continue to share the story of Boko Haram's operations? Here I will argue that the process by which the story of Boko Haram is told within the North American context corroborates the theoretical arguments forwarded by Hartman, Morrison, Spillers, and Freud.

Studies in American Africanism, in my view, should be investigations of the ways in which a nonwhite, Africanist presence and personae have been *constructed— invented— in the United States, and of the literary uses this fabricated presence has served...* Ernest Hemingway, who wrote so compellingly about what it was to be a white male American, could not help folding into his enterprise of American fiction its Africanist properties." (emphasis mine)<sup>106</sup>

Nothing on the news reporting of Boko Haram captures a profound literary contrast more than the work of Adam Nossiter of *The New York Times* — who, for the next half of a decade, would "head [*The New York Times*'] West Africa bureau in Dakar, Senegal"<sup>107</sup> and become the most frequent corresponding reporter on events concerning Boko Haram (nationally). The first two sentences of his first article on Boko Haram in 2009 and his most recent article in February of 2015 initially, made me believe that the story became *more* graphic as the years welcomed the profane violence of Boko Haram:

2009:

Scores have been killed in clashes between the police and members of a fundamentalist Islamic sect in towns across northern Nigeria, a predominantly Muslim region that for years has had regular and often bloody outbreaks of sectarian *unrest*. An *obscure* group opposed to Western education appears to be at the root of the current *troubles*.<sup>108</sup> (emphasis mine)

2015:

They came in the *dead* of night, their faces covered, riding on motorcycles and in pickup trucks, shouting "Allahu akbar" and firing their weapons. "They started with the shootings; then came the *beheadings*," said Hussaini M. Bukar, 25, who fled after Boko Haram fighters stormed his town in northern Nigeria.<sup>109</sup> (emphasis mine)

Surely, one could only assume that as Boko Haram evolved in its tactics (with time and experience), the nature of its narration would also grow in detail and gore. This unfounded assumption was (for me), only confirmed through the juxtaposition of 2009 stories featuring photographs of safely *secured*/"*arrested*"/*alive/unharmed* culpable suspects and benign language (i.e. 'obscure', 'unrest', 'troubles'),<sup>110</sup> and a 2015 article with terror(ble) language about how "they [Boko Haram] tied their hands behind their backs, ... and cut their head[s] off."<sup>111</sup> This would suggest that as the story and its characters developed, so would the special effects and imagery used to help the reader suspend disbelief and stay tuned for the next issue. My intuitive assumption was quickly suspended after realizing that only two days later (after the 2009 article), that *The New York Times* would print an article (written by Adam Nossiter) with a graphic

photograph of a nameless "body of a man killed Wednesday in fighting in Maiduguri, the capital of Borno State in Nigeria."<sup>112</sup>

Some stories were graphic, gory, spectacular, an exhibition of what those men who believe that 'Western education is sinful,' could actually do; characteristic of our status quo contemporary (*Hartmanian*) imagery of Boko Haram. Other stories were not. Through it all however, "the "terrible spectacle" that introduced [the story of Boko Haram continued to]... reinforce the spectacular character of black [or Nigerian] suffering."<sup>113</sup> Like any spectacle of this nature, "the casualness with which they are circulated, and the ... display of the [victims'] ravaged body," made me wonder if 'this was *always* the case.' Were we always casually circulating images and photographs of the insurgent violence in northern Nigeria (or otherwise for that matter)? Was *The New York Times* running stories prior to 2009 or 1999 during "Boko Haram's alleged period of incubation"?<sup>114</sup> Or to be more thorough, as Abimbola Adesoji's historiography suggest,<sup>115</sup> was the Western world also producing stories ('news reporting' or otherwise) on

The Maitatsine uprisings of 1980 in Kano, 1982 in Kaduna and Bulumkutu, 1984 in Yola and 1985 in Bauchi, ... the Kano metropolitan riot of October 1982, the Ilorin riot of March 1986, the University of Ibadan crisis of May 1986, the nationwide crisis over Nigeria's membership in the Organisation of the Islamic Conference in January/February 1986, the Kafanchan/Kaduna/Zaria/Funtua religious riots of March 1987, the Kaduna Polytechnic riot of March 1988, the acrimonious, nationwide debate on Sharia (Islamic law) at the Constituent Assembly in October/November 1988, the Bayero University crisis of 1989, the Bauchi/Katsina riots of March/April 1991, the Kano riot of October 1991, the Zangon-Kataf riot of May 1992, the Kano civil disturbance of December 1991 and the Jos crisis of April 1994 (Imo 1995: 21-23; Ibrahim 1997: 512-516; Enwerem 1999: 124).<sup>116</sup>

To answer the question simply, *no*. In the years of 1985-1994 (following Adesoji's timeline by date and region), *The New York Times* reported a total of 7 stories pertaining to the tumultuous regions as outlined by Adesoji<sup>117</sup>— with only *4 stories actually pertaining to the sectarian/insurgent violence* (1992).<sup>118</sup> Yet, at this moment in 2009-2015, *The New York Times* published a total of 453 articles relating to "Boko Haram."<sup>119</sup> Surely there must be a reason for such a profound statistically significant rise in media coverage<sup>120</sup> on insurgent violence in Nigeria, *despite* its consistent frequency.

I want to suggest that these concerns—*autonomy*, authority, newness and difference, *absolute power*—not only become the major themes and presumptions of American literature, *but that each one is made possible by, shaped by, activated by a complex awareness and employment of a constituted Africanism*. It was this Africanism, deployed as *rawness and savagery*, that provided the staging ground and arena for the elaboration of the quintessential American identity.<sup>121</sup> (emphasis mine)

If it is true that there exists "more nuanced explorations of the *conjunction* between new media and American literature,"<sup>122</sup> then these news reports of Boko Haram (im)properly become a part of the 'American literature' Toni Morrison indicts. But not only that, I hope to displace the rigid binaries to uncover "insights regarding both new media and American literature [that] can emerge from their conjoining."<sup>123</sup> Operating under "the premise that literature, technology, and

*media* have always been deeply intertwined,"<sup>124</sup> I approach the decoding of the current phase of the United States' 'war on terror' through a close reading of the *story of Boko Haram*,<sup>125</sup> as well as its employment with the American military industrial complex. It is important that we understand how these stories circulate *not* in the privacy of our Internet browsers. Instead, given our historical moment, these stories circulate in the *public* space(s) of our internet browsers *within* our seemingly private domains. *Am I really alone at home as I scour over LexisNexis News for hours? Or am I at the newsstand, gossiping and eavesdropping on someone's conversation at the train station on Chambers St., NY?* As Victoria Bernal in "Diaspora, Cyberspace and Political Imagination: The Eritrean Diaspora Online" writes, one must reconceptualize how we understand "public space." Bernal indicates, "new media, especially the Internet, are giving rise to novel communicative spaces and practices and creating new discursive communities."<sup>126</sup> In this respect, American news reporting (new media) on Boko Haram is not a neutral function of "the dissemination of information," as Walter Benjamin famously argued.<sup>127</sup> Instead, the "creativity, imagination, and realism" of any given story harnesses the potential to "make [the] news part of the literary discipline."<sup>128</sup> As Lee Siegel of *The New Yorker* Suggests, "instantaneous news of what happened, or might have happened, has become our art, and, like the chorus in ancient Greek tragedy, we are all part of the swelling roar."<sup>129</sup> To return to Morrison however, Boko Haram invariably becomes a part of a literary tradition where "the denotative and connotative blackness that African peoples have come to signify"<sup>130</sup> becomes "a mechanism for testing the problems and blessings of freedom."<sup>131</sup>

On September the 11th, enemies of freedom committed an act of war against our country ... and night fell on a different world, a world where freedom itself is under attack... Al Qaeda is to terror what the mafia is to crime... its goal is remaking the world -- and imposing its radical beliefs on people everywhere... The terrorists' directive commands them to kill Christians and Jews, to kill all Americans, and make no distinction among military and civilians, including women and children... Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.<sup>132</sup>

The media trajectory that launched the story of Boko Haram was guided by an axiomatic avowal of American Africanism. Like Morrison, I want to suggest that the properly liberalist concerns of autonomy (freedom), authority, and absolute power was compromised with the terrorist attacks of 9/11. The United States of America was coerced into an indefinitely extreme and radical militarism. al-Qaeda forced the United States into doing something it "would not otherwise do,"<sup>133</sup> by its display and performance of unrepressed power on September 11, 2001. Ironically, what appears to be George W. Bush's most profound moment of chief command (as he receives applause for his five non-negotiable "demands on the Taliban"), is actually America's weakest historical vignette. In one day, the Taliban made a mockery of America and instigated reactive hegemonic claims toward authority, autonomy, and absolute power. As such, the nodal point of the American political project for the next decade would require a war on "every terrorist group of global reach." Only, after trillions of dollars in defense spending and its immeasurable human toll, the war begins to see signs of termination in the summer of 2014.

The process of pursuing al-Qaeda as a radical 'other' in the American context required what Anna Agathangelou calls a *slave-cratic-visuality of power*— a process (through motifs of blackness and orientalism) to make legible the facelessness of the enemy by gesturing toward "tensions between slavery and colonialism... [the production of] a signifying site that expresses terror and terrorism beyond the frames of dominant imperial and sovereign state powers." Similar to my investigation into Boko Haram and framing within the 'afterlife of slavery,' Agathangelou begins her "insurgent postcolonial and materialist critique" by a close reading of "the visualized terror associated with al-Qaeda and its leader bin Laden."<sup>134</sup> Through a rhetorical/discursive mechanism distinct from my analysis on tropes of 'disfigurement,' Agathangelou's engagement with theorizations on visually and media indicates that news stories (picturing bin Laden specifically) "gestures to images circulating in the US about black youth and their criminalization [and]... that black is ontologically dead [in ways that] makes terror visible."<sup>135</sup> Given Agathangelou's contention that "Africa is the originary and the final site of the undoing of the coherency of slave-cratic-visuality structures of power," the US policy and media agenda's momentary shift from al-Qaeda to Boko Haram becomes natural—especially in a world where "the black person as the 'phenomenal event and not an intelligible object of humanity' makes coherent the terrorism conflict."<sup>136</sup>

In the summer months of 2014, the same months that share the story of 300 kidnaped schoolgirls by Boko Haram, mainstream media erupted with news stories about U.S. troop withdrawal in Afghanistan.<sup>137</sup> By way of contrast, the continued play of the story of Boko Haram is a tactful literary stunt to reaffirm the American identity as 'democratic', 'civil', 'free', 'peaceful', and 'altruistic.' To argue that the American military industrial machine is unconcerned with the deployment of literary tactics of narration is to ignore the history of the Cold War, the process of containment, and the inception of United States Information Service (USIS).<sup>138</sup> Richard Jean So pointedly reminds us that there was a "major shift in communications strategy for the US state"<sup>139</sup> during the end of World War II and the start of the Cold War. So goes on to suggest that, "the government seemed newly cognizant of the "explosion" of new media technologies that had occurred in the past decade, which included radio, the telegraph, and cinema."<sup>140</sup> With this new proliferation of writing, rhetorical, and communicative technologies/methodologies, "the world now appeared promiscuously awash with *words* in an unregulated and borderless media field. In order to win the war against Communism, the US state needed to gain control of this field—*to manipulate the meaning of such words and direct their movement to the cause and consolidation of democracy.*"<sup>141</sup> It is my argument that the 'manipulation' of words and meanings (discourse) justly translates into our contemporary moment as we watch the story of Boko Haram unfold. For Morrison, the story of Boko Haram is emblematic of a concurrent brand of American Africanism where "the Africanist character [acts] as a surrogate and enabler," who instigates the question, "In what ways does the imaginative encounter with Africanism enable white writers to think about themselves?"<sup>142</sup> Or, as bell hooks identifies, by "re-writing you I write myself anew. I am still author, authority."

I stand on the American continent where on any other given day, America would give not a second of news time to a story like "300" or "2,000" except for the fact that "the presence [of this

story] was curial to their sense of Americanness. And it shows."<sup>143</sup> Could the West really be civilized, Christianized, law respecting peoples if they had nothing to say to about the barbaric, fundamentally Islamic, challengers to the weak Nigerian state? And more importantly, could the United States really *still* be at war with terror if they ignored the written story of Boko Harm? America is home of the great voyeurs who save the day in the face of violence and global terror—after all, "our war on terror begins with al-Qaeda, but it does not end there." In the face of a compromised American narrative with the withdrawal of American troops in Afghanistan, a story needed to be created in order to validate Western horror to terrorism. Despite withdrawal, the American psyche needed to know that we are still at war with terrorist. That West is still disgusted by their methods. The media campaign of #BringBackOurGirls and the political storm it created in America is validation enough. So much, that even Michelle Obama posted the iconic image of support, writing: "our *prayers* are with the missing Nigerian girls and their families. It's time to #BringBackOurGirls. -mo."<sup>144</sup>

## 6 Conclusion



Picture 2. Images are never unmediated, neither when they are made nor when they are read or viewed. They are constellations of worldviews abstracted from their contexts and reinserted into other spaces to participate with us in onto-political-structural contestations. They are not us but they are vital to our struggle to either reanimate or kill life.<sup>145</sup>

Right outside this fence and on the other side of the sandstone wall that blocks off the compound, are children attending a primary school on Alafia avenue in Lagos, Nigeria. In a remarkable

unison, these children would sing their greetings to their teacher *every* morning with an almost hypnotic tenor of profound devotion, and unqualified sincerity. These schoolyard songs and the children that sang them had a way of commanding audibility that made it impossible to ever steal away from its sound. The songs played as an interjecting interlude that constrained the quotidian and mundane routine of urban life for anyone around to listen. For me, those sounds haunt the pretext for this article because they typify an intersubjective trice of international human connection— even in moments where the sound only exists in my memory. I heard those songs once again when the story about the kidnaping of 300 Nigerian schoolgirls took hold on the international news cycle. Though I knew for certain that the school on Alafia avenue was safe, terror did its work of transforming benign memories like the one captured in the image above into horrible scenes of kidnaped schoolgirls whose torn "dresses [are] scattered all over" the school ground.<sup>146</sup> A sudden feeling of death and destruction was all I could intellectualize. Terror has a way of flattening experience and reason and sense such that sentimentality and feeling are able to take hold of our social and political ideations of personhood. Somehow Spillers must have known that *sound* is what would get me here. Or maybe words, or maybe sight. whatever. Perhaps the discourse remains open to revealing itself not in spontaneity but in the earnest endeavors of generative capacity "against the stubbornness of tradition."<sup>147</sup> I hope those children are still alive and that in theory, we can exhume what it means to witness their death.

## 7 Acknowledgements

To my late mentor and beloved friend Dr. Harris Mirkin, and community of scholar-mentors Jesus Raul Ayotunde Cepin, Dr. Jane Greer, Elizabeth Hayles, Nancy Levit, Dana Owens, Edward D. Scott, Jr., and Dr. Elizabeth Vonnahme who have all in some way guided this project.

## Notes

<sup>1</sup> Ed Morgan, "International Law's Literature of Terror," *Canadian Journal of Law & Jurisprudence* 11, no. 2 (2002): 317-326.

<sup>2</sup> Peyi Soyinka-Airewele, "The End of Politics?: Reclaiming Humanity in an Age of Biopower and Necropolitics," *Covenant University Public Lecture Series* 4, no.2 (2015). Relying on Achille Mbembe's most important offering of the notion of "necropolitics" and his articulation that politics (*through an understanding of biopower and sovereignty*) must:

Therefore [be understood as] death that lives a human life," Soyinka-Airewele comes to the most logical conclusion that: "we must return again to Mbembe's definition of Politics as —death living a human life. If Politics is "death living a human life," perhaps there is nothing more optimistic than to speak about the end of politics—that is, the "end of death living a human life. (33)

<sup>3</sup> Barry Grossman & Jaan Islam, "A Long and Broken History of Western "Universalism": Cosmopolitanism," *International Journal of Political Theory* 1, no.1 (2016): 25.

<sup>4</sup> Stuart Elden & Jeremy W. Crampton, *Space, Knowledge and Power: Foucault and Geography* (Ashgate, 2007): 6.

<sup>5</sup> Grossman & Islam., at, 13.

<sup>6</sup> Lyndon LaRouche, *Beyond Psychoanalysis* (The Campaigner, 1973): 27.

<sup>7</sup> Helen Berents, "Hashtagging Girlhood: #IAmMalala, #BringBackOurGirls and Gendering Representations of Global Politics," *International Feminist Journal of Politics* 18, no. 4 (2016): 513-527

<sup>8</sup> Giorgio Agamben, *Homo Sacer: Sovereign Power & Bare Life* (Stanford, California: Stanford University Press, 1998 [1995]): 88.

<sup>9</sup> Hortense J. Spillers, "Mama's Baby, Papa's Maybe: An American Grammar Book," *Diacritics* 17, no. 1 (1987): 67.

<sup>10</sup> Harold D. Lasswell, *Psychopathology and Politics*, (Chicago & London: The University of Chicago Press, 1986 [1930]): 17-18.

<sup>11</sup> Nicholas Royle, *The Uncanny* (New York: Routledge, 2003): (vii).

<sup>12</sup> Grossman & Islam., at, 13-16.

<sup>13</sup> Achille Mbembe, *On the Postcolony* (Berkeley and Los Angeles: University of California Press, 2001).

<sup>14</sup> Frantz Fanon, *Black Skin White Mask* (New York: Grove Press, 1967 [1952]). see, Anna Agathangel, "Anxieties of Global Empire: Politics of Visibility Epistemology and 'Terror,'" *Knowing Al-Qaeda: The Epistemology of Terrorism* (Routledge, 2016): 32. The primary concern of this article resides in visual culture and its parade of scenes of violence. As Fanon indicates, "The act of violence is not the killing field, the orgy of destruction. Violence is visibility, the shared evil that forces together the oppressor and the oppressed. Violence is the awareness of freedom's proximity of the fragility of survival."

<sup>15</sup> Rae Earnshaw & Norman Wiseman, *An Introductory Guide to Scientific Visualization* (Springer Science & Business Media, 2012).

<sup>16</sup> *Ibid.*, at, 2.

<sup>17</sup> Daron Acemoglu & James A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty* (New York: Crown Publishers, 2012): 285-314.

<sup>18</sup> Achille Mbembe, "Necropolitics," *Public Culture* 15 (2003): 40.

<sup>19</sup> Rebekah Lee & Megan Vaughan, "Death and Dying in the History of Africa Since 1800," *Journal of African History* 49 (2008): 349-351.

<sup>20</sup> Spillers, "Mama's Baby, Papa's Maybe., at, 68.

<sup>21</sup> Omotade Adegbindin, "Critical Notes on Hegel's Treatment of Africa," *Ogirisí: a New Journal of African Studies* 11, (2015): 20.

Africa is not among Hegel's four cultures or civilizations. From Hegel's perspective, Africa is said to be unhistorical; undeveloped spirit – still involved in the conditions of mere nature; devoid of morality, religions and political constitution.<sup>2</sup> Hence he holds that there is a justification for Europe's enslavement and colonization of Africa. For him, slavery causes the "increase of human feeling among the Negroes.

<sup>22</sup> Frantz Fanon, *The Wretched of the Earth* (New York: Grove Press, 1963): 41.

<sup>23</sup> Sabelo J. Ndlovu-Gatsheni, "The Logic of Violence in Africa," *Ferguson Center for African and Asian Studies Working Paper* 4, (2011).

<sup>24</sup> Spillers, *Mama's Baby, Papa's Maybe.*, at, 68.

<sup>25</sup> Mbembe, "Necropolitics.", at, 21.

<sup>26</sup> Fanon, *The Wretched of the Earth.*, at, 20, 38-39.

<sup>27</sup> I use the word "flesh" here (as opposed to bodies) to invoke Spiller's specifically.

<sup>28</sup> Mbembe, *Ne.*, at, 23.

<sup>29</sup> *Ibid.*, at, 35.

<sup>30</sup> Jared Sexton & Huey Copeland, "Raw Life: An Introduction," *Qui Parle* 13, no.2 (2003): 53-62.

<sup>31</sup> Mbembe, "Necropolitics.", at, 35.

<sup>32</sup> Cynthia B. Dillard, "The substance of things hoped for, the evidence of things not seen: examining an endarkened feminist epistemology in educational research and leadership," *International Journal of Qualitative Studies in Education* 13, no. 6 (2000): 661-681. My argument for an "endarkened Freudian" mode of inquiry is heavily influenced by Dillard's "Assumption no. 5: Knowing and research extend both historically in time and outward to the world: to approach them otherwise is to diminish their cultural and empirical meaningfulness" (676-677). I want readers to understand my correction/call out to Freud's suppression of Du Bois' contribution to his theory of the double in the general "shaping of the rules which have historically guided formal educational research, the system of knowledge production within higher education, and the meanings and legitimacy surrounding research processes." I want to not only discredit Freud's pioneering brand but also provide a needed critique as well as an "endarkenment" on society as a whole.

<sup>33</sup> Sigmund Freud, "The "Uncanny"," Translated by Alix Strachey, first published in *Imago*, Bd. V., 1919; reprinted in *Sammlung*, Fünfte Folge.

<sup>34</sup> Freud argues that 'the uncanny', or more precisely, "the feeling of uncanniness," can be simply understood as a sentimental identification to the 'strangely familiar.' Put another way, Freud asserts that 'the uncanny' "is that class of terrifying which leads back to something long known to us, once very familiar" (1-2). Freud further defines 'the uncanny' as:

In reality nothing new or foreign, but something familiar and old—established in the mind that has been estranged only by the process of repression. This reference to the factor of repression enables us, furthermore, to understand Schelling's definition of the uncanny as something which ought to have been kept concealed but which has nevertheless come to light" (13).

<sup>35</sup> Martin Wight, *International Theory: The Three Traditions* (New York: Holmes & Meier Publishers, 1992): 25.

<sup>36</sup> Robert Schuett, *Political Realism, Freud, and Human Nature in International Relations: The Resurrection of the Realist Man* (Palgrave Macmillan, 2010): xi.

<sup>37</sup> *Ibid.*, 149.

<sup>38</sup> Paul Gordon, "Psychoanalysis and Racism: the Politics of Defeat," *Race & Class* 42, no. 4 (2001): 18.

<sup>39</sup> I quickly depart from Gordon's larger argument given my assumption of an *endarkened* reading of Freud and Gordon's misplaced expectation and judgment of the work of theory.

<sup>40</sup> Hortense J. Spillers, *Black, White, and in Color: Essays on American Literature and Culture*, ""All the Things You Could Be by Now, If Sigmund Freud's Wife Was Your Mother": Psychoanalysis and Race," (Chicago & London: The University of Chicago Press, 2003): 376-427

<sup>41</sup> *Ibid.*, 382.

<sup>42</sup> *Ibid.*

<sup>43</sup> Omar Benton Ricks, "On Jubilee: The Performance of Black Leadership in the Afterlife of Slavery," (Dissertation, University of California, Berkeley, 2014): 22.

<sup>44</sup> See Spillers, *Black, White and in Color.*, at 516-517 (notes 8-11).

<sup>45</sup> Ricks., at 28-29. see also, Slavoj Žižek and Ernesto Laclau, *The Sublime Object of Ideology* (1994).

<sup>46</sup> as well as 19th century work in psychology to be discussed.

<sup>47</sup> Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination* (Massachusetts: Harvard University Press, 1992): 13. See also, Ashley Tidey, "Limping or Flying? Psychoanalysis, Afrocentrism, and *Song of Solomon*," *College English* 63 (2000): 48-70.

<sup>48</sup> Bernard W. Bell, "Genealogical Shifts in Du Bois's Discourse on Double Consciousness as the Sign of African American Difference," *W. E. B. Du Bois on Race and Culture*, ed. Bernard W. Bell, Emily R. Grosholz, James B. Stewart (New York: Routledge, 2013): 90.

<sup>49</sup> Arnold Rampersad, "Psychology and Afro-American Biography," *The Yale Review* 78 (1988): 1-18., see also, Oswald Külpe, *Outlines of Psychology*, trans. Edward Bradford Titchener (New York: MacMillian, 1895)., Arnold Rampersad, *The Art and Imagination of W. E. B. Du Bois* (Cambridge: Harvard University Press, 1976): 74., Walter Kalaidjian, ""The Pardon of Speech": The Psychoanalysis of Modern American Poetry," *The Oxford Handbook of Modern and Contemporary American Poetry*, ed. Cary Nelson (New York: Oxford University Press, 2012): 461-486.

<sup>50</sup> Stephano Harney & Fred Moten, *The Undercommons: Fugitive Planning & Black Study* (New York: Minor Compositions, 2013): 26.

<sup>51</sup> Specifically, Spillers' "Mama's Baby, Papa's Maybe: An American Grammar Book" (1987), her insightful piece ""All the Things You Could Be by Now, If Sigmund Freud's Wife Was Your Mother": Psychoanalysis and Race" ([1996], reprinted about three times after its original publication in 1996), and Rampersad's important "Psychology and Afro-American Biography" (1989). Oddly enough however, these works, though both embarking on the path of psychoanalytic and literary critique, speak directly past each other. Though Rampersad's article was published (Autumn, 1988), about a year and four months after Spillers' 'Mama's Baby, Papa's Maybe,' It is increasingly strange that Rampersad fails to even mention *any* of Spiller's early work. This strangeness is further isolated by the fact that Spillers actually began the work that would become 'Mama's Baby, Papa's Maybe' at a conference "at Barnard College in 1982" and through a series of essays from 1984-1989. See, Hortense Spillers, Saidiya Hartman, Farah Jasmine Griffin, Shelly Eversley & Jennifer L. Morgan, ""Whatcha Gonna Do?": Revisiting "Mama's Baby, Papa's Maybe: An American Grammar Book": A Conversation with Hortense J. Spillers, Saidiya Hartman, Farah Jasmine Griffin, Shelly Eversley, & Jennifer L. Morgan," *Women's Studies Quarterly* 35 (2007): 299-309.

<sup>52</sup> Frantz Fanon, *Black Skin White Mask* (New York: Grove Press, 1967 [1952]).

<sup>53</sup> Toward a much larger project beyond the limits of this article.

<sup>54</sup> Spillers, *All the Things You Could Be by Now, If Sigmund Freud's Wife Was Your Mother*., at, 377.

<sup>55</sup> Robin D. G. Kelley, *Freedom Dreams: The Black Radical Imagination* (Boston: Beacon Press, 2002): 2-3; 108; 197.

<sup>56</sup> Derek Hook, "Fanon and the Psychoanalysis of Racism," *LES Research* (2007), simply defines "collective catharsis" by suggesting that his reading of Fanon tells us:

In Fanon's conceptualization, then, the early traumatic event to be found at the origin of neurosis appears to be cultural in form, its source hence being a type of *cultural trauma*. As he puts it, 'there is a constellation of postulates, a series of propositions that slowly ... with the help of books, newspapers, schools and their texts, advertisements, films, radio -- work their way into one's mind' (152). Fanon demands more of an explanation than this, though, and attempts to understand something about the logic of racism in the kind of cultural victimisation he has been discussing. Each society, he claims, has a form of **collective catharsis** through which a certain amount of aggression can be 'channelled' outward and released. Cultural forms of expression are one way in which this happens. Cultural forms in colonial contexts overwhelmingly take on a racist coloration, such that whether we are talking about the characters (or plots) of television, comics, films, popular jokes, stories 'the Wolf, the Devil, the Evil Spirit, the Bad Man, the Savage are always symbolized by Negroes' (Fanon, 1986, 146).

<sup>57</sup> See, *Fanon, Black Skin, White Mask.*, at, 112-113, for a fuller exploration on *collective catharsis*.

<sup>58</sup> *Ibid.*

<sup>59</sup> Kelly Oliver, *The Colonization of Psychic Space: A Psychoanalytic Social Theory of Oppression* (Minneapolis & London: University of Minnesota Press, 2004): 68

<sup>60</sup> *Fanon, Black Skin, White Mask.*, at, 231-232

<sup>61</sup> Roger W. Reeves, "Black Western Thought: Toward a Theory of the Black Citizen-Object," (Dissertation: The University of Texas at Austin, 2012: 6-11.

<sup>62</sup> Fred Moten, "Blackness and Nothingness (Mysticism in the Flesh)," *The South Atlantic Quarterly* (2013): 738.

<sup>63</sup> W. E. B. Du Bois, *Dusk of Dawn: An Essay Toward An Autobiography of a Race Concept* (New York: Schocken Books, 1970 [1940]): 131.

<sup>64</sup> *Morgan.*, at, 317.

<sup>65</sup> David Marriott, *On Black Men* (New York: Columbia University Press, 2000): 124.

<sup>66</sup> Paul D. Miller, *Rhythm Science* (London: Mediawork/The MIT Press, 2004): 69.

<sup>67</sup> Anna Agathangelou, "Neoliberal Geopolitical Order and Value," *International Feminist Journal of Politics* 15 (December 2013): 453-476.

<sup>68</sup> *Morrison.*, at, 6.

<sup>69</sup> Closely related to Morrison's argument about American Africanism. Freud also gives or hints at *another* reason for why a particular actor may be driven toward the constant creation of, the feeling of uncanniness through narrations of terror. This answer seems to be grounded in what he calls the "repetition compulsion" which would certainly answer the 'frequency' component of my question. He indicates that:

How exactly we can trace back the uncanny effect of such recurrent similarities to infantile psychology is a question I can only lightly touch upon in these pages; and I must refer the reader instead to another pamphlet,<sup>14</sup> [footnote #14 here is a citation to his essay *Beyond the Pleasure-Principle*] now ready for publication, in which this has been gone into in detail, but in a different connection. It must be explained that we are able to postulate the principle of a *repetition compulsion* in the unconscious mind, based upon instinctual activity and probably inherent in the very nature of the instincts—a principle powerful enough to overrule the pleasure-principle, lending to certain aspects of the mind their daemonic character, and still very clearly expressed in the tendencies of small children; a principle, too, which is responsible for a part of the course taken by the analyses of neurotic patients. Taken in all, the foregoing prepares us for the discovery that whatever reminds us of this inner *repetition-compulsion* is perceived as uncanny. Now, however, it is time to turn from these aspects of the matter, which are in any case difficult to decide upon, and look for undeniable instances of the uncanny, in the hope that analysis of them will settle whether our hypothesis is a valid one. (11-12)

<sup>70</sup> Freud., at, 8-10., "For the "double" was originally an insurance against destruction to the ego."

<sup>71</sup> Perhaps some new radical vision emerges that must be disciplined out of our American imaginations (what Freud calls "dreams") and brought back to the order of the status quo.

<sup>72</sup> Olúfémí Táíwò, "This Prison Called My Skin: On Being Black in America," *Problematizing Blackness: Self-Ethnographies by Black Immigrants to The United States*, ed Percy C. Hintzen & Jean Muteba Rahier (New York: Routledge, 2003): 42.

<sup>73</sup> *Ibid.*

<sup>74</sup> I use "(imagi)native" (imaginative) to evoke an almost native aesthetic/epistemology toward the end of thinking about "land"/"space" as cognitive units, as opposed to units of mater, materials, and "property." Instead of pursuing decolonization under the rubric of 'land/property reclamation,' Martineau and Ritskes (2014) hint at transcendental modalities (much like my intention toward an enumeration of the political imagination) as "a lived critique of settler modes of knowing and sensing that are *cognitively ordered* through property and ownership." see, Jarrett Martineau & Eric Ritskes, "Fugitive Indigeneity: Reclaiming the Terrain of Decolonial Struggle Through Indigenous Art," *Decolonization: Indigeneity, Education & Society* 3 (2014): I-XII (emphasis mine)

<sup>75</sup> "Stolen Innocence: Your Daughters Are Our Daughters," *Black Entertainment Television News*, BET, Atlanta, May 25, 2014.

<sup>76</sup> Edward W. Said, *Orientalism* (New York: Vintage Books, Random House, 1978): 327.

<sup>77</sup> Helen A. S. Popkin, "Hashtag Wars: Who's Behind the Nigeria #BringBackOurGirls Movement?," *NBC News*, May 9, 2014., Popkin writes that "Thanks to the prevalence of social media tracking tools, the provenance of #BringBackOurGirls is easily tracked to its first use on April 23, by Ibrahim Abdullahi, a corporate lawyer in Abuja, Nigeria."

<sup>78</sup> Melissa Harris-Perry, "Teen's daring escape from Boko Haram," *MSNBC*, April 18, 2015.

<sup>79</sup> Spillers, "Mama's Baby, Papa's Maybe",, at, 73.

<sup>80</sup> Raymond Geuss, *Politics and the Imagination* (Princeton & Oxford: Princeton University Press, 2009): viii.

<sup>81</sup> Freud, *The "Uncanny"*., at, 14-15.

<sup>82</sup> Spillers, "Mama's Baby, Papa's Maybe",, at, 67-69.

<sup>83</sup> And how the desire to produce the Black female (through Moynihan) as a double to the Black male is only a desire to maintain the axiological premises that is responsible for the patriarchal conditions of "the New World."

<sup>84</sup> Though Spillers enumerates this on four different levels, I will synthesize them to *two* for the sake of clarity and relevance.

<sup>85</sup> Alexander Weheliye, "Pornotropes," *Journal of Visual Culture* 7 (2008): 65-81., La Marr Jurelle Bruce, "The People Inside My Head, Too": Madness, Black Womanhood, and the Radical Performance of Lauryn Hill," *African American Review* 43, no. 3 (2012): 371-389., Most simply stated, "pornotroping" can be understood as the:

mass-circulation of the figure of [the Black]-in-pain [which] perpetuates what cultural theorist Saidiya Hartman calls "the spectacular character of black suffering" (3).<sup>10</sup> This process coarsens audiences to the lived reality of such pain, romanticizes and aestheticizes that pain, invites audiences' narcissistic projections onto it, and fetishizes it for voyeuristic consumption.<sup>11</sup> (Bruce) Weheliye's definition of "pornotroping" gives me a language to describe the process of creating and transmitting terrorist narratives. Weheliye also gives us contextual examples like "slavery, the Holocaust, colonialism, and the recent images from the Abu Ghraib prison, as well as from the aftermath of Hurricane Katrina" (72). These examples are very similar to my focus on images tied to the events of Boko Haram.

<sup>86</sup> Spillers, "Mama's Baby, Papa's Maybe",, at, 67.

<sup>87</sup> "Corpses of Boko Haram Fighters Assaulted In Maiduguri," *Live Leak*, February 2, 2015, [http://www.liveleak.com/view?i=e84\\_1422872701](http://www.liveleak.com/view?i=e84_1422872701)

<sup>88</sup> Haruna Umar and Adamu Adamu, "Boko Haram Suspected As Twin Blasts Hit Nigerian Market," *Huffington Post and The World Post*, December 1, 2014., Alexandra Hartmann, "Everything You Need to Know About Boko Haram, the Group Kidnapping Nigerian Girls," *World Mic*, May 8, 2014., Sunny Nwankwo, "Horror in Borno as Boko Haram dismembered 10," *The Daily Independent*, May 3, 2014.

<sup>89</sup> "Northeast Nigeria ; A Battered Region Dotted With Human-Land-Mines," 247ureports, <http://247ureports.com/northeast-nigeria-a-battered-region-dotted-with-human-land-mines/>., Abdulkareem Haruna, "Northeast Nigeria ; a battered region dotted with human-land-mines," *Echoes News Nigeria (Kareem Haruna's Blog)*, December 6, 2014, <http://echoesinn.blogspot.com/2014/12/northeast-nigeria-battered-region.html?m=1>., "Dismembered Body Of Female Suicide Bomber Who Blew Up Herself In Damaturu (Graphic)," *BIGLAWNewsLine*, February 16, 2015, <http://biglawnewsline.com/2015/02/dismembered-body-of-female-suicide-bomber-who-blew-up-herself-in-damaturu-graphic.html>., Aminu Abubakar, "Explosives strapped to girl kill 20 people at Nigerian market," *CNN*, January 11, 2015.

<sup>90</sup> Adetoro Rasheed Adenrele, "Boko Haram insurgency in Nigeria as a symptom of poverty and political alienation," *Journal Of Humanities And Social Science* 3, no. 5 (2012): 21-26.

<sup>91</sup> *Spillers*, "Mama's Baby, Papa's Maybe",, at, 67.

<sup>92</sup> Stephano Harney & Fred Moten, *The Undercommons: Fugitive Planning & Black Study* (New York: Minor Compositions, 2013): 68.

<sup>93</sup> Abimbola Adesoji, "The Boko Haram Uprising and Islamic Revivalism in Nigeria," *Africa Spectrum* 45, no. 2 (2010): 99.

<sup>94</sup> Atta Barkindo, Benjamin Tyavkase Gudaku, & Caroline Katgurum Wesley, "Our Bodies, Their Battleground: Boko Haram and Gender-Based Violence against Christian Women and Children in North-Eastern Nigeria since 1999," *Nigeria's Political Violence Research Network*, no. 1 (2013): 11.

<sup>95</sup> The New York Times, "Explaining Boko Haram, Nigeria's Islamist Insurgency," *The New York Times*, November 10, 2014 (reposted on May 8, 2015, per Lexis)., one of *The New York Times'* most recent articles on Boko Haram incorrectly (perhaps, ethnocentrically) suggests that, "Boko Haram is an Islamist extremist group responsible for dozens of massacres of civilians and the abduction of more than 500 women and girls *in its five-year insurgency in Nigeria*." I assume that this inaccurate five-year timeline is *solely* based on when *The New York Times* began covering Boko Haram with a 2009 article written by Adam Nossiter. Meanwhile, the actual peer reviewed research suggests "that the group has been around for some time, as long as ten or fifteen years" (see *Adesoji*., at, 98.). For The New York Time's first article on Boko Haram (presumably), see, Adam Nossiter, "Scores Die as Islamic Fighters Battle Nigerian Police," *The New York Times*, July 28, 2009.

<sup>96</sup> Bashir Adigun, "Nigeria Says Terror Suspects With Al-Qaida Links Arrested in Country's Muslim North," *The Associated Press*, November 12, 2007.

<sup>97</sup> "Nigerian Security Arrests Terror Suspects," *UPI*, November 12, 2007., "Analysis: Nigeria Sees Al-Qaida Oil Threat," *UPI Energy*, November 12, 2007.

<sup>98</sup> Adam Nossiter, "Scores Die as Islamic Fighters Battle Nigerian Police," *The New York Times*, July 28, 2009., Adam Nossiter, "Nigerian Troops Surround Militant's House," *The New York Times*, July 29, 2009., Adam Nossiter, "Nigerian Forces Attack Compound of Islamic Militants," July 30, 2009., Adam Nossiter, "Nigeria Confirms Death Of Islamic Sect's Leader," *The New York Times*, July 31, 2009., The Associated Press, "Nigeria: Accounts Conflict On Sect Leader's Death," *The New York Times*, August 1, 2009., Senan Murray & Adam Nossiter, "After Suppression of a Sect, a Nigerian Town's Fear Is Mingled With Relief," *The New York Times*, August 4, 2009., Adam Nossiter, "Nigerians Recount Night of Their Bloody Revenge," *The New York Times*, March 11, 2010., Adam Nossiter & Sani Adamu, "Prison Raid In Nigeria Releases Hundreds," *The New York Times*, September 9, 2010., Adam Nossiter & Isa Gusau, "Killings Signal Violent Revival Of Nigeria Sect," *The New York Times*, October 19, 2010., The Associated Press, "Nigeria: Mosque Attack Signals A New Round of Violence," *The New York Times*, November 20, 2010., The Associated Press, "Nigeria: Islamist Sect Members Are Arrested in Killings," *The New York Times*, November 23, 2010.

<sup>99</sup> Katharine Houreld, "Warnings Ignored In Nigeria, Clerics Say," *The Washington Post*, August 3, 2009.

<sup>100</sup> Tina Moore, "Christmas Day bombings in Nigeria kill at least 39, radical Muslim sect claims responsibility," "Holiday horror in Nigeria (lexis)," *Daily News*, December 26, 2011., Oren Yaniv, " U.S. to hunt thugs in Nigeria church attack," *Daily News*, December 27, 2011.

<sup>101</sup> *Adesoji.*, at, 98-99.

<sup>102</sup> Matt Rozsa, "Why is mainstream media ignoring the Boko Haram attacks?," *The Daily Dot*, January 19, 2015., Faith Karimi & Aminu Abubakar, "Nine days later, bodies still litter bushes from Boko Haram's 'deadliest' massacre," *CNN*, January 12, 2015., Terrance McCoy, "Boko Haram may have just killed 2,000 people: 'Killing went on and on and on,'" *The Washington Post*, January 9, 2015.

<sup>103</sup> See *Rozsa.*, above., Christopher Harress, "More Boko Haram Deaths, Less Media Coverage And No U.S. Troops On the Ground In Nigeria," *International Business Times*, June 6, 2014., Maeve Shearlaw, "Why did the world ignore Boko Haram's Baga attacks?," *The Guardian*, January 12, 2015., China Okasi, "Why no one is talking about Boko Haram," *MSNBC*, January 15, 2015., N'jaila Rhee, "Why Boko Haram Is Killing Thousands with Little Media Coverage," *This Week In Blackness*, January 19, 2015., Jared Malsin, "Why western media overlooked a massacre in Nigeria," *Columbia Journalism Review*, February 2, 2015.

<sup>104</sup> Glenna Gordon, "Nigerians Don't Need More Boko Haram Coverage, They Need Action," *Vanity Fair News*, January 20, 2015.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Morrison.*, at, 90.

<sup>107</sup> Priya Kumar, "Farewell to New Orleans," *American Journalism Review (AJR)*, June/July 2009.

<sup>108</sup> Adam Nossiter, "Scores Die as Islamic Fighters Battle Nigerian Police," *The New York Times*, July 28, 2009.

<sup>109</sup> Adam Nossiter, "Boko Haram, and Massacres Ruled by Whim," *The New York Times*, February 5, 2015.

<sup>110</sup> *Nossiter*, "Scores Die as Islamic Fighters Battle Nigerian Police",, this article features a photograph of about 51 males captioned as "Suspected religious fundamentalists [who] were arrested during a crossfire with the police in Bauchi, northern Nigeria, on Sunday" (source: Agence France-Presse — Getty Images).

<sup>111</sup> *Nossiter*, "Boko Haram, and Massacres Ruled by Whim,".

<sup>112</sup> Adam Nossiter, "Nigerian Forces Attack Compound of Militants," *The New York Times*, July 29, 2009., image sourced by: Pius Utomi Ekpei/Agence France-Presse — Getty Images.

<sup>113</sup> *Hartman.*, at, 3.

<sup>114</sup> Atta Barkindo, Benjamin Tyavkase Gudaku, & Caroline Katgurum Wesley., at, 4.

<sup>115</sup> *Adesoji.*, at, 96., explains that this historiography is concerned with exploring "the [insurgents'] first attempts at imposing a religious ideology on a secular, independent Nigeria, [that] marked the beginning of ferocious conflict and crises in Nigeria (Isichei 1987: 194-208; Ibrahim 1997: 511-512)."

<sup>116</sup> *Ibid.*, at, 96-97.

<sup>117</sup> 3 of the reports were unrelated to insurgent violence. See, The Associated Press, "Chronicling the Worst Aviation Disasters," *The New York Times*, August 17, 1987., Keith Bradsher, "Boeing 707: the First U.S. Commercial Jetliner," *The New York Times*, January 26, 1990.

<sup>118</sup> Associated Press, "Toll in Religious Riots In Nigeria Is Put at 24," *The New York Times*, May 19, 1992., Associated Press, "Nigeria Quells Religious Riots; 200 Dead," *The New York Times*, May 20, 1992., Associated Press, "Some Groups Banned by Nigeria After Riots," *The New York Times*, May 21 1992., Kenneth B. Noble, "Nigerians Brace for Fallout of Civil Strife," *The New York Times*, May 23, 1992.

<sup>119</sup> My sample relies on date/region modification searches through LexisNexis. In 2009-2015, 408 newspaper articles and 46 blog posts were made about "Boko Haram."

<sup>120</sup> While the reporting of *The New York Times* is not representative of the entire U.S. news industry, it is my impression that these numbers are substantially insightful for highlighting the mass circulation of public discourse on Boko Haram (2009-2015).

<sup>121</sup> *Morrison.*, at, 44.

<sup>122</sup> Tara McPherson, Patrick Jagoda, & Wendy H. K. Chun, "Preface: New Media and American Literature," *American Literature* 85, no. 4 (2013): 615-628., the authors define new media as:

Stemming from "mass media," carries with it connotations of entertainment, quick communication, and ephemeral information—that is, something other than literature, which implies ineffable and lasting artistic merit, density rather than clarity, and most traditionally, familiarity with letters and books. (615)

<sup>123</sup> *Ibid.*, at, 616.

<sup>124</sup> *Ibid.*

<sup>125</sup> I am *italicizing* the "story of Boko Haram," to signify my investigation's interest in looking at Boko Haram not necessarily as a political/organizational unit. Instead, it is more important for my reader to understand Boko Haram as a short novel-- a literary device even. I am interested in Boko Haram as a rhetorical/epistemological question (how we read, write, know and understand the thing).

<sup>126</sup> Victoria Bernal, "Diaspora, Cyberspace and Political Imagination: The Eritrean Diaspora Online," *Global Networks* 6, no. 2 (2006): 161-179.

<sup>127</sup> *McPherson, Jagoda, & Chun.*, at, 616, citing: Walter Benjamin, "The Storyteller," *Illuminations* (New York: Harcourt, Brace and World, 1968): 89.

<sup>128</sup> Ana Margarita Aguilera Reyes, "Dominatrix News: News as Literature" (master's thesis, San Diego State University, 2011), 50.

<sup>129</sup> Lee Siegel, "Is the News Replacing Literature?," *The New Yorker*, February 12, 2014.

<sup>130</sup> *Morrison.*, at, 6.

<sup>131</sup> *Ibid.*, at, 7.

<sup>132</sup> George W. Bush, "Address to the Nation," transcript provided by *Presidential Rhetoric*, September 20, 2001.

<sup>133</sup> William L. Ury, Jeanne M. Brett, & Stephen B. Goldberg, *Getting Disputes Resolved Designing Systems to Cut the Costs of Conflict* (San Francisco: Jossey Bass Publishers, 1988): 7.

<sup>134</sup> Anna Agathangel, "Anxieties of Global Empire: Politics of Visibility Epistemology and 'Terror'," *Knowing Al-Qaeda: The Epistemology of Terrorism* (Routledge, 2016): 29.

<sup>135</sup> *Ibid.*, at, 33.

<sup>136</sup> *Ibid.*, at 42.

<sup>137</sup> For example, these are just a few of the stories printed by The New York Times: Mark Landler, "U.S. Troops to Leave Afghanistan by End of '16," *The New York Times*, May 28, 2014., "Obama's New Troop Withdrawal Plan for Afghanistan," *The New York Times*, May 29, 2014., Michael R. Gordon, "Criticism Over Troop Withdrawal Emerges From Beyond G.O.P.," *The New York Times*, June 5, 2014.

<sup>138</sup> Richard Jean So, "Literary Information Warfare: Eileen Chang, the US State Department, and Cold War Media Aesthetics," *American Literature* 85, no. 4 (2013): 723.

Dwight Eisenhower, newly elected to the president's office in 1952, who elevated the agency to a central role in US Cold War political strategy, endowed it with increased funds, and expanded its staff worldwide. Most important, he also assumed a more intellectual posture in thinking through the agency's function. In 1953, he wrote: "The purpose of [the USIA] is to depict imaginatively the correlation between U.S. policies and the legitimate aspirations of other peoples in the world" (Cull 2008, 101).

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*, at, 723-724. (emphasis mine)

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<sup>142</sup> *Morrison.*, at, 51-51.

Africanist idiom[s] [are] used to establish difference ... to signal modernity ... to reinforce class distinctions and otherness as well as to assert privilege and power... a black idiom and the sensibilities it has come to imply are appropriative for the associative value they lend to modernism—to being hip, sophisticated, ultra-urbane.

<sup>143</sup> *Morrison.*, at, 6.

<sup>144</sup> Michelle Obama, "Our prayers are with the missing Nigerian girls and their families. It's time to #BringBackOurGirls. -mo," *twitter/@flotus/associated press*, May 7, 2014 .

<sup>145</sup> *Agathangelou, "Anxieties of Global Empire"*., at, 32.

<sup>146</sup> Vlad Duthiers,"Victim's family: 'We have nobody to help us, Exclusive to CNN: Father of two missing Nigerian schoolgirls, 'Life in Chibok, it looks like we have no hope," *CNN Press Room*, May, 7th, 2014., As described by the family of one of the abducted Nigerian girls in an interview with CNN's Vlad Duthiers.

<sup>147</sup> Hortense J. Spillers, *Black White & In Color.*, at, x.



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[DOI: 10.22609/2.1.3](https://doi.org/10.22609/2.1.3).

# Speaking Crisis in the Eurozone Debt Crisis: Exploring the Potential and Limits of Transformational Agonistic Conflict

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## ABSTRACT

Agonism as a political theory emphasizes the ontological aspect of conflict in human political interaction. This article aims to shed light on the political practice of agonism – and in doing so on its limits – by viewing 'crisis discourse' as an agonistic political practice. As my analysis of the Dutch Socialist Party and the Freedom Party's speech in the European Sovereign Debt Crisis shows, crisis discourse aimed to (re)create a 'people' and to justify radical change in economic and social structures. Crisis discourse is employed to construct an 'other' that can be based on ethnic and nationalist terms and to justify retroactive application of the law and the stripping of Dutch citizens of their rights. This attention to crisis discourse as an agonistic political practice highlights an unease within agonism itself: where must the agonist accept limits to the conflict and contestation she so values? The article starts with Chantal Mouffe's answer to this question - her insistence that legitimate conflict must always recognize the shared values of equality and liberty - and proceeds to show that Mouffe's view unnecessarily relies on a deliberative democratic desire for consensus. Other than Mouffe, I draw on Honig's emphasis of perpetual contestation to propose that the issue of limits can be best answered by reference to the core of agonistic thought: the preservation of the struggle over political norms and processes. It is not shared values or even a shared political space that matters, but that the political space of the 'people' – however contested membership therein might be – remains a place that the 'other' can re-enter.

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**Keywords:** Agonism, Antagonism, Bonnie Honig, Chantal Mouffe, Crisis Discourse, Exclusion

## 1 Introduction

At the beginning of the second decade of the 21<sup>st</sup> century, Europe was in crisis. Greece was no longer able to service its debt, and began to request a series of loans from the IMF and European Union. Spain, Portugal, Ireland and Cyprus soon followed.<sup>1</sup> Concerns about weak national economies with high sovereign debt collapsing and bringing the other Eurozone economies down with them were rampant, both in Europe and globally.<sup>2</sup> In 2010 national elections were held in the Netherlands and, only two years later, after the government fell due to discord over austerity measures responding to the Eurozone crisis, another election was held. During both of these elections the concept of crisis loomed large. Political parties on the right and left mobilized a discourse of crisis that constructed specific threats to the political community and that worked to justify the necessity of certain deep changes to legal and political structures to remedy these threats, even going so far as to propose retroactive legislation and stripping certain Dutch citizens of their nationality. This article argues that the crisis discourse used by two specific political parties in the Netherlands, the Socialist Party and the Freedom Party, is both an example of agonism at work in political discourse and that this example can help us think through more carefully a key, yet underdeveloped, debate in agonistic theory: whether agonism accepts any limits to political contestation. When does the conflict agonists so value become unacceptable?

Agonists approach politics from the starting-point that political systems depend on contingent foundations that produce and sustain relations of power that benefit some while excluding others.<sup>3</sup> Political struggle is seen as legitimately focusing on challenging those foundations, thus including contest over the very principles, procedures and foundations of political life. In this sense, the democratic contest is seen as going “all the way down”<sup>4</sup> to the fundamental principles of a political system. Since agonists rejects the possibility of ever eliminating contingency or the influence of power relations on political decision-making,<sup>5</sup> agonistic politics is about the struggle over *which* particular “configuration of power relations around which a given society is structured” gains hegemonic status.<sup>6</sup>

Over the past decade-and-a-half, multiple theories of agonism have appeared, been fleshed out and analyzed. Many scholars have attended to the different streams of agonism,<sup>7</sup> the *ethos* needed for agonism to thrive,<sup>8</sup> and most recently, what agonism means for the institutional structure of democratic political systems.<sup>9</sup> Yet, during this period, the issue of the *limits* to acceptable political activity within an agonistic conception has remained unsatisfactorily conceptualized. Theories of agonism promote and value conflict and contestation and argue that legitimate political debate can include dissent over the

fundamental values of society. They hold that change of the most basic institutions must be possible and claim that any given society cannot avoid exclusion and othering. It remains, however, unclear whether agonist theory posits any *limits* to this contest? Can *any* values and *any* type of change be legitimately argued for? Are all exclusions to be accepted?

The answers that some agonists have attempted to give to these questions remain unsatisfactory. Chantal Mouffe gives us the most guidance on these questions, arguing that in order for political action to be acceptable, it must take place within a shared symbolic space of equality and liberty. According to Mouffe, once a political actor leaves this symbolic space and no longer accepts the values of equality and liberty, her actions can no longer be considered acceptable from the perspective of agonism and she becomes an enemy.<sup>10</sup> This approach however seems to reveal an underlying reliance on more consensus-oriented deliberative democracy – the very strand of thought that agonism aims to critique. After all, if the point agonist scholars are making is that the political is about the contestation of the very foundations of a particular society – how can values such as equality and liberty be placed beyond this space of contestation? Moreover, Mouffe's insistence on shared political values fails to accurately identify the real risk of agonistic conflict: not that values are contested, but that conflict leads to the permanent destruction of the other. While Mouffe's work does recognize the need for agonism to prevent such permanent destruction, the importance claim is weakened by Mouffe's attention to other more substantive limits to political conflict.

I argue that a more satisfactory approach to the limits of conflict can be found by attending to how agonism plays out, concretely, in the language political actors use. Attention to political discourse clarifies how agonism works in the everyday business of politics and, by doing so, reveals the concrete implications of an agonistic attitude towards politics, including the risks conflict can entail. This attention to the discourse of agonism as used in actual political practice remedies the shortcomings of agonism's traditional approaches to the limits of acceptable politics in two ways. First, by attending to the actual practice of the political and by seeing language as a site of agonism, we are able to more clearly grasp the risks inherent in agonism and more clearly specify what can be done about these risks. As we move from the abstract level of agonistic theory to the very concrete level of agonistic practice, it becomes apparent what exactly is at stake in agonistic contests. In other words, by taking language seriously, we are able to take the risks of agonism more seriously. Second, in attending to discourse as a tool of agonism, we stay true to agonism's post-foundational commitment to the importance – and contingency – of meaning in the political. It is this contingency of meaning that eventually leads us to a more sufficient conceptualization of the limits of acceptable political activity, thus avoiding Mouffe's proposal that these limits can only be found in consensus-based liberal democratic ideas of a shared commitment to equality and liberty.

The particular type of language use this article focuses on is what I call crisis discourse: a narrative that discursively constructs a threat and that frames a fundamental change to the

legal, social or political order as the only way to address that threat. In doing so, crisis discourse has the potential to (re-)constitute the friend/enemy distinction in a political community around the constructed threat and act as a catalyst of structural change.<sup>11</sup> These two characteristics of crisis discourse – its ability to call into being a ‘people’ and call for radical change make crisis discourse a tool of agonistic politics. In this sense, when one ‘speaks crisis’, something is done. Crisis discourse is often approached as a ‘speech act’: it does more than simply reflect reality as it already is. Speaking crisis can be seen as a ‘performative utterance’<sup>12</sup> that – when successful – brings a reality into existence that was not there before.<sup>13</sup> In this way, my approach to crisis discourse can be reconciled with agonism’s post-foundationalism. Within post-foundationalist theories, language and language games are acknowledged as the means by which humans attribute meaning to the world and by which humans are turned into subjects. It is through discourse that power is exercised and through discourse that power is challenged.<sup>14</sup> This discursive aspect of politics – and of the construction of crises – drives my focus on the specific language used by those invoking crisis discourse. By examining this site of power in a systematic way, as the following sections will do, we can see more concretely how exclusion takes place in political activity, what its effects are in a particular case and take the risks of this exclusion seriously. Attention for the illocutionary force of crisis discourse will show that we can view the risks of agonistic speech as part of a continuum of risk: while risk cannot be eliminated from political speech, we can evaluate whether political speech brings us closer to or farther away from the limit between the conflict agonism values and that which it cannot.

In what follows, I will define crisis discourse in more detail and show how it is used in political communication (Section 2). I apply my analysis to the crisis discourse employed in relation to the financial upheaval that has marked the second decade of the 21<sup>st</sup> century, focusing on the discourse used by two Dutch political parties in relation to what is often termed the ‘European sovereign debt crisis’<sup>15</sup>. Section 2 further explores how crisis discourse functions as a tool of agonistic politics as I emphasize crisis discourse’s ability to (re)constitute a ‘people’ and to call for fundamental change. The concrete examples of crisis discourse in Section 2 set the stage for the subsequent exploration of where agonism sets the limits to acceptable political speech in Section 3. Here, I acknowledge the risks attendant in using crisis discourse, risks that agonists seem too often to underestimate and I explore where the limits of using crisis discourse as a political tool lie, by taking language – and the risks – seriously. At the same time, I ensure that I maintain the possibility of perpetual contestation contest over political values and institutions, an emphasis particularly present in Honig’s work on agonism.<sup>16</sup> In the end, I propose viewing the dangers of agonistic speech as part of a continuum of risky illocutions with a clear boundary between the *agonistic* behavior that can be positioned on this continuum and unacceptable behavior that crosses the boundary into *antagonism*: the realm of the destruction of the other.

## 2 Crisis Discourse as a Tool of Agonistic Politics

Crisis discourse has been impossible to ignore during recent years' developments in financial markets. During the financial crisis that started after the fall of a number of systemic banks in 2007 and 2008, political and economic actors employed crisis discourse that framed these events and attributed causes and responsibilities to certain actors and objects.<sup>17</sup> Different variations of crisis discourse were pervasive in the public speech of international corporations and national political organizations.<sup>18</sup> As a term, crisis discourse can be traced to different lineages. The field of crisis communication within a larger literature on business communication has enjoyed increasing popularity over the past 15 years.<sup>19</sup> This field has focused mostly on how companies can best react to crises in order to protect their reputation and to manage shareholder impressions,<sup>20</sup> although recent attention has also been paid to the potential crisis offers for the introduction of innovations in business.<sup>21</sup> The study of crisis itself has also been a point of interest within the field of international relations and public policy studies.

With his seminal article in 1999,<sup>22</sup> Colin Hay provided a framework for understanding when and how crises can arise, and what affects they have on the state. Although not focusing specifically on the role of discourse, Hay's work provided the basics necessary for later exploration of how crisis discourse can be constructed by political actors.<sup>23</sup> Most recently, crisis discourse has been explored within critical discourse studies.<sup>24</sup> In this section I will analyze the crisis discourse with the following method of discourse analysis.

Discourse analysis starts from the assumption that language *does something*. Language calls into being a new reality based on its performative force. When we speak we not only describe 'reality' but at the same time create or transform reality. This constitutive function of language is referred to as language's illocutionary force.<sup>25</sup> In order to study this function of language, discourse analysis studies how language contained in a variety of texts links together various elements into a chain of meaning. It is important to recognize that it is impossible to ever fully localize a complete discourse and instead, one must look to texts as artifacts that can give us indications of the content of social discourse. In this way, the text – as a written or spoken selection of language – serves as a crystalized point of discourse, evidence (and to some extent a simplification) of the complex and dynamic language games that produce social reality.<sup>26</sup>

My concern with crisis discourse as a tool of agonistic politics, leads me to focus my analysis on *public* discourse in this article. To illustrate the main characteristics of crisis discourse, this section draws on instances of crisis discourse used by two Dutch political parties during the so-called 'European sovereign debt crisis'. These two political parties, the Socialist Party (*Socialist Partij*) and the Freedom Party (*Partij voor de Vrijheid*) are situated at opposite ends of the Dutch political spectrum. The Socialist Party is the most left-leaning party in Dutch parliament, and the Freedom Party the most right-leaning party in Dutch parliament.<sup>27</sup> Based on the realization that crisis discourse can be a tool for structural change, it is a logical assumption that the parties furthest from the political status-quo

would be most likely to employ crisis discourse (although this is certainly not to say centrist parties never attempt to change the status quo through crisis discourse). While this article focuses on crisis discourse as used in the Netherlands, the speech used by the left-populist Socialist Party and the right- populist Freedom Party echoes that employed by other anti-establishment parties and candidates, on both the left and the right in other Western democracies, for example in France (with *La France insoumise* on the left and the *Front National* on the right) or the United States (with Democratic primary candidate Bernie Sanders on the left and Donald Trump on the right). As will be shown below, a survey of the Socialist Party and Freedom Party's discourse between 2010-2014 provides us with an example of the use of crisis discourse during the critical years of the European sovereign debt crisis.

The key characteristic of crisis discourse is its ability to discursively frame events in ways that define a particular problem and postulate a seemingly necessary solution, thus “selectively legitimating certain courses of action.”<sup>28</sup> Constructing a moment as crisis requires “a double articulation of the events themselves and of a solution to the morbid, underlying condition they were claimed to represent.”<sup>29</sup> In crisis discourse, the first of these articulations diagnoses, naming a problem or threat, the latter proposes a specific change necessary to solve of this problem.

### ***Framing the threat of crisis***

In its framing of the problem, crisis discourse creates an urgent threat that is posed by a ‘them’ to an ‘us’.<sup>30</sup> The problem is attributed to a group that is constructed as being opposed to the ‘us’, the group who is unduly threatened by the problem. If the crisis is to be taken seriously, and if the solution is to be justified, the threat must be construed as an existential threat: a threat to the physical survival of an individual or group or a threat to the survival of the individual or group’s identity.

Crisis discourse’s framing of the problem as a threat to a current way of life can be seen in the language used by both the Socialist Party and the Freedom Party regarding how they perceived the threat posed by the Eurozone crisis, although it is clear that the parties differ in their definition of this threat. The Socialist Party’s use of crisis discourse focused specifically on the economic causes and effects of recession and budget cuts, and placed the blame squarely on the financial sector and the politicians who facilitate it.

The Netherlands is at a crossroads. Our economy is in a recession that threatens to deepen into a great crisis. A crisis with lost jobs, lower wages and threats to our pensions. A crisis with great social consequences. One that undermines solidarity, shared destinies and confidence in the future. This is not a natural disaster that just happened to us. It is the consequence of a derailed financial sector. A consequence of a system that favors the short term interests of shareholders and consumers above the long term interests of citizens, employees and our society as a whole.<sup>31</sup>

Serving the bill of the crisis to those who had no part in the cause of the crisis, causes more crisis. Not less. [This is] an approach that ensures that thousands of people are sitting at home unemployed

and that smothers the recovery of the economy. That is a costly lesson history has taught us before. A lesson this cabinet has forgotten.<sup>32</sup>

In constructing this threat, the crisis discourse used by the Socialist Party presupposed an ‘us’, a ‘people’ who is being threatened by a ‘them’, the ‘most rich’, bankers and speculators as well as the political parties whose policies allowed for these enemies to have their way:

In the past years, European leaders have paid more attention to the financial markets than to the needs of the citizens. The Dutch government is participating in that.<sup>33</sup>

The government ... lets the most-rich do whatever they want. And imposes cuts of billions on citizens. ... Such austerity politics enlarges the division in society and suffocates economic growth.<sup>34</sup>

In contrast to the Socialist Party’s framing of the threat as mainly economic, caused by the financial sector, the Freedom Party constructed a far broader threat. Although the threat of economic crisis was discussed explicitly, often the Freedom Party expanded the crisis to include a threat posed by ‘Europe’ and immigrants to the Netherlands. So for example, the Freedom Party discursively linked a threat to the welfare state in the context of the European sovereign debt crisis with immigration from Muslim countries:

Only the Freedom Party is standing up to protect the welfare state and is therefore in favor of stopping immigration from Islamic countries. You can’t have both: either you are a welfare state or an immigration country. All other parties choose the latter.<sup>35</sup>

The Freedom Party claimed that the Dutch state was in a crisis that was the biggest since the introduction of liberal democracy into the Dutch constitution by Thorbecke and linked this, again, to a threat posed by immigration:

Our democracy is in the biggest crisis since Thorbecke. More and more Dutch people are wondering why The Hague is pushing on with these disastrous measures that are not supported by our people. In the meantime, many have the feeling that we are losing the Netherlands. Neighborhood after neighborhood, school after school is being islamified.<sup>36</sup>

Part of the threat perceived by the Freedom Party during the European sovereign debt crisis was the power the Freedom Party saw the European Union as having over the Netherlands.

Brussels, keep your hands off our taxes. Never, ever European taxes! We citizens are not here to finance your undemocratic organizations. Look up how the Eighty Year War started (Hint: it started with the *tiende penning*, a tax of the European superstate of those days).<sup>37</sup>

And why does the Netherlands give seven billion euro to Brussels each year, while our elderly have pajama days and have to pay for their own walker? Did *they* rebuild the Netherlands after the war or did those Greek swindlers?<sup>38</sup>

Brussels wants to control the Netherlands to the last detail ... Bye, bye freedom.<sup>39</sup>

In the Freedom Party’s crisis discourse, just like in the Socialist Party’s, a clear ‘us’ is created and juxtaposed against a ‘them’ that is causing the threat. However, the Freedom

Party's 'us' and 'them' are differently composed than the Socialist Party's. For the Freedom Party, the group being threatened by the crisis was ethnically and nationally defined – the Dutch, non-Muslim citizen was the 'us', set against the 'them' of the European Union and of Islam.

### ***Framing the call to change***

The framing of the urgent and existential threat posed by the crisis is linked to the solution the crisis discourse calls for. How this solution is framed is the second unique aspect of crisis discourse. "Defining the solution is fundamental to the construction of crisis."<sup>40</sup> There are two types of solutions that can be proposed to the 'problem' or 'threat' defined in the diagnostic crisis frame: the first is when "a solution is sought within the *pre-existing and largely unmodified structures of the state* regime, generally in the absence of a crisis narrative."<sup>41</sup> This is to say, when this response is employed, the particular register of 'crisis' is downplayed. Instead, it is argued that the events are not rightly interpreted as crises, but rather as incidental failures that can be dealt with by using the current measures in place. The second type of solution that can be offered is one in which "the very institutional form of the system of reference ... is fundamentally transformed." A restructuring of the system is proposed as the necessary solution.<sup>42</sup> It is only when this solution is offered, in addition to the diagnostic frame of a threat that I speak of crisis discourse. Crisis discourse is characterized by a call to take action that breaks with past approaches; action that entails structural change. As Hay argues, "during moments of crisis, indeed, during the very process of crisis identification, the state is discursively reconstituted as an object in need of decisive intervention and as the object of strategic restructuring."<sup>43</sup>

The Socialist Party called very explicitly for structural change in response to the crisis and proposed a shift away from austerity and towards active investment and solidarity. The Socialist Party appealed to the people to take an active part in this moment in history and to decide what type of society they want to live in, thus doing the work of positing the state as in need of the 'decisive intervention' Hay speaks of.

The way out of this crisis will also not just be something that happens to us, that presents itself naturally ... This is not the time to sit on your hands. It is time to roll up your sleeves. To make the right choices for the future. So that the derailed financial system gets back on track and the long-term interests of the Netherlands prevail over the short-term profit hunting or short-sighted austerity. A recession must be fought with cuts based on solidarity, smart investments and reforms. Not just with cold austerity such as the cabinet is doing.<sup>44</sup>

These elections will determine whether our society becomes even harder and the division even bigger, or that we now make another choice and start building a more social, more humane and more sustainable Netherlands.<sup>45</sup>

Future generations will look at us critically. And ask why this crisis wasn't used to make the transition to a more sustainable future. Clean energy, dealing with pollution and protecting the environment. They will ask themselves why only a few years after the crisis in the financial sector it is back to business as usual and a new crisis has not been prevented. Future generations will wonder why the causes of the crisis have not been dealt with.<sup>46</sup>

The Freedom Party also proposed certain solutions to the threats their crisis discourse constructs. Their solutions were less concrete, but no less clear. In the words of the Freedom Party, on the issue of the threat posed by the EU and Islam in the context of economic crisis:

Our battle is a just one and we are standing on the shoulders of those who went before us. And we must do the same as our ancestors: Parliament must issue a serious warning to the most powerful institute of Europe, in this case the multicultural superstate with its capital in Brussels – the empire that wants to impose more Islam on us and take away every memory of an independent and recognizable Netherlands. Again: a people that is led by the wrong leaders has to be able to say goodbye to the ruling ideology.<sup>47</sup>

We are the only ones who are saying to the unelected eurocrats: your end is our beginning. Your dream is our nightmare. Your loss is our gain. We are the only ones saying: it has to end somewhere. Now it is time to be the boss in our own country. Our flag is red-white-blue.<sup>48</sup>

This call for change, if accepted by sufficiently powerful and numerous groups, can indeed lead to structural change. In this way, the use of crisis discourse implies a “moment in which the unity of the state is discursively renegotiated and, potentially, reacheived and in which a new strategic trajectory is imposed upon the institutions that now (re-)comprise it.”<sup>49</sup>

Above we have seen the characteristics of crisis discourse, particularly focusing on the discourse used in relation to the European sovereign debt crisis. The next two parts of this section focus on how crisis discourse acts as a tool of agonism. By attending to the ability of crisis discourse to create us/them distinctions and call for and justify change, these next parts explore how crisis discourse reflects the agonistic characteristics in political interaction.

### ***(Re)Constituting ‘the people’***

Despite great variety within theories of agonism,<sup>50</sup> agonists share the assumption that politics is not a matter of rational deliberation between equally powerful parties, but rather that they key characteristic of the political is the distinction between a ‘we’ and a ‘they’, an inside and an outside to the political community. How this distinction is given shape is not fixed or natural, but is rather the object of political activity and contestation. In this contest between defining and shifting the boundaries of insiders and outsiders, a conception of the ‘people’ – and what this ‘people’ want – is at stake and this struggle is the “political act par excellence”<sup>51</sup> This emphasis on in- and exclusion in political activity is grounded on the ontological assumption that difference is “an axiological principle of our collective lives.”<sup>52</sup> Agonists see it as ontologically impossible for any one regime or ideology to encompass and represent all the interests and identities of all people.<sup>53</sup> Every consensus, every constellation of political power, is “based on acts of exclusion” and reveals “the impossibility of a fully inclusive ‘rational’ consensus.”<sup>54</sup>

Crisis discourse engages in this political act ‘par excellence’ of creating a people, by discursively creating an us/them division. Crisis discourse’s construction of a threat, discursively creates an ‘other’ who is framed as the cause of the threat and must be excluded from the ‘people’ – an inside – who is threatened and must be protected. By naming a threat broad enough to threaten more than one particular group, crisis discourse is able to bring various groups together into a coalition that sees itself sharing an overarching interest in dealing with this threat. It articulates a discourse that emphasizes common interests instead of differences between the groups that are formed into a ‘people’.<sup>55</sup> This discourse masks and depoliticizes differences between the different groups and individuals that comprise the ‘us’ while it (re)politicizes differences between the ‘us’ and the ‘them’.

This construction of the people goes beyond only reflecting or reinforcing a construction of a people that is already present in political discourse. As we see in the Freedom Party and Socialist Party’s use of crisis discourse, crisis discourse can also *reconstitute* the distinctions between the ‘us’ and the ‘them’, disrupting previously constituted coalitions. By articulating new logics of equivalence, crisis discourse peels away particular groups from former coalitions. Here, groups are destabilized as crisis discourse (re)politicizes the differences *within* the group. For example, the Socialist Party’s use of crisis discourse attempts to (re)constitute the ‘people’ around class lines, positioning “shareholders and consumers” against “citizens, employees and our society as a whole.”<sup>56</sup> The Socialist Party referred to the interest the ‘people’ have in not enduring the deep austerity cuts and argues that these cuts should instead be borne by the ‘most rich’ so as to discursively link the many diverse groups outside the ‘most rich’ together in a ‘people’. All who are not the ‘most rich’ are discursively linked together in a common project.<sup>57</sup> The Socialist Party called this people into being, while it acted on its behalf. The Freedom Party also called a ‘people’ into being, and did so by referring to the threat ‘Islamification’ posed to traditional Dutch identity (to be found in the welfare state, neighborhoods and schools) and by placing Dutch financial interests against those of the larger European Union. The people the Freedom Party created is one that is nationally, but also ethnically, defined. Only those within the borders of the Netherlands – and only those who did not get there as the result of immigration from Muslim countries – are counted as belonging to the people. Again, here too, the Freedom Party linked together the many diverse groups that can be found within the ethnically Dutch in opposition to the ‘threat’ posed by Islamification,<sup>58</sup> the ‘European superstate’,<sup>59</sup> and ‘Greek swindlers’,<sup>60</sup>

### ***Changing the rules of the democratic game***

Agonists emphasize that political conflict between groups includes conflict over basic ideas about what is “reasonable or unreasonable, legitimate or illegitimate political action and speech.”<sup>61</sup> From this perspective, agonists argue that the possibility to contest the very procedures and agreements of democracy is vital; these procedures and agreements must

always be open to change. Politics “is the type of game in which the framework – the rules of the game – can come up for deliberation and amendment in the course of the game.”<sup>62</sup> And this room for conflict and contestation must be preserved and, as Chantal Mouffe explains:

“... the specificity of modern democracy lies in the recognition and the legitimization of conflict and the refusal to suppress it though the imposition of an authoritarian order. A well-functioning democracy calls for a confrontation between democratic political positions, and this requires a real debate about possible alternatives.”<sup>63</sup>

Here, again, we see crisis discourse having a role to play. As we saw in the Freedom Party and Socialist Party’s use of crisis discourse, this particular discourse allows the speaker to call for change to the structure of the current system. The Socialist Party called for major, structural change to the economic system and argued that the cause of the crisis can only be solved if the foundational principles of the capitalist economy are overhauled.<sup>64</sup> The Freedom Party’s solution to the threat posed by Islamification and ‘Europe’ is found in defending the Netherlands against this influence. It implies rejecting the ‘ruling ideology’, the multiculturalism that the Netherlands – and Europe – has built its democracy on since World War II, and means far-reaching change to the Dutch state’s current legal and political links to the European Union, as well as to guarantees and protections of rights of immigrants.

In practice, this rhetoric crystallized into the Socialist Party supporting a thorough reform of the financial sector, setting caps on incomes for managers in the public and semipublic sector, limiting the power of shareholders and criminalizing financial mismanagement. The Socialist Party proposed a new top tax rate of 65% and a new way of taxing wealth so as to combat unequal distribution of wealth in the Netherlands.<sup>65</sup> The Socialist Party was in favor of “clipping the wings” of private equity funds that take over companies and “suck them dry as locusts do.”<sup>66</sup> The Socialist Party has moreover argued in favor of the retroactive application of legislation banning bonuses for managers at financial institutions that received state support after the crisis.<sup>67</sup> In practice, this meant arguing in favor of 100% taxation rate on any bonuses given to such managers, even if the bonuses were given before the proposed law passed. The Freedom Party used the ‘crisis’ to justify its calls for banning immigration from “Islamic countries.”<sup>68</sup> Moreover, the Freedom Party proposed stripping convicted criminals who have double nationalities of their Dutch citizenship, deporting non-Dutch citizens who commit a crime<sup>69</sup> and criminalizing being in the Netherlands without a valid permit.<sup>70</sup> The Freedom Party argued in favor of stripping non-Dutch citizens of their voting rights in local elections and stripping Dutch citizens with a second nationality of the ability to be a member of the government, parliament and local political organs.<sup>71</sup>

These calls for change are buttressed by reference to the supposed existential threat the crisis discourse is based on. The claim is that the threat occurred because the current

structures failed to prevent it and this threat now must be dealt with by changing the structure that allowed this threat to materialize. These calls for change concern the very rules of the ‘democratic game’; including changes to fundamental political and legal procedures (for example stripping people of voting rights and retroactive application of the law) and fundamental rights (stripping people of citizenship). In this way, the crisis discourse fits within an agonistic view on what political conflict is about: conflict over the very ideas upon which a current political system is based. Moreover, as shown above, crisis discourse can create extremely exclusive conceptions of the people, conceptions based on race, religion and class. These concrete examples of exclusion and calls for change raise concerns about whether agonism can see *all* calls for change as legitimate political action? Do proposed changes ever go too far for agonists or does the importance of contestation and conflict mean that no type of change can be off limits?

The ability of crisis discourse to create, solidify and break the us/them distinction and the ability of crisis discourse to justify structural change reveals its deeply political potentials. The use of crisis discourse in this way, to participate in the struggle over meaning, gives us an example of agonism at work in current politics. Yet, this analysis also made concrete just how far the othering and calls for change can go within crisis discourse. This section showed how the Socialist Party and the Freedom Party used crisis discourse to discursively exclude the other and to justify fundamental political and legal change, including the retroactive application of laws, labeling all the inhabitants of a particular countries determined “Islamic” unwelcome in the Netherlands and stripping certain Dutch citizens of their nationality. The following section explores the question whether agonists must accept all such exclusions and calls for change or whether agonists must admit limits to the conflict and contestation they so value. I will start by exploring the answer Mouffe gives to this question, and proceed to argue that this answer is insufficient as it relies too much on the very consensus-oriented politics agonism aims to critique and fails to take seriously the risks posed by crisis discourse. Instead, I propose a theory of the limits of legitimate political activity that draws on tenets inherent in the values agonism itself professes. I develop the idea of a ‘continuum of risky illocutions’ that helps us better conceptualize agonism’s boundaries of the acceptable.

### 3 Speaking Crisis

Crisis discourse can be a powerful tool for shifting the boundaries of the ‘people’ and for calling for foundational change. But it also has the potential to activate a type of conflict in which no limits are placed on the destruction of the other.<sup>72</sup> Moreover, crisis discourse can construct an argument for change that impacts the very foundations of political, social or legal orders. This type of change often entails an increased willingness to deviate from political and legal procedures, as well as from the protection of fundamental rights. This willingness is supported by the logic of necessity crisis discourse invokes: the link

discursively made between the threat and the seemingly necessary solution. As we have seen in the examples of crisis discourse discussed above, this type of speech can pit the ‘average’ person against the most rich,<sup>73</sup> compare private equity funds to locusts,<sup>74</sup> evoke imageries of past wars,<sup>75</sup> and claim that Dutch citizens are being robbed of their freedom,<sup>76</sup> as the EU “impose[s] more Islam on us.”<sup>77</sup> The past section showed how this discourse can intensify the exclusion of an ‘other’ and justify departures from the rule of law and human rights violations against this other. Yet, from the perspective agonists take on politics, attempts to change the political system are not exceptional or extraordinary but rather part and parcel of the political. Moreover, conflict between groups is seen as an inevitable part of the struggle that characterizes the political, and is an aspect that must not be suppressed. However, agonists also acknowledge the possibility that the us/them distinction can become too hardened, at which point the contest can no longer be characterized as agonistic, but rather as antagonistic. At that point, contestation is no longer productive but becomes destructive, and should be considered unacceptable.

This section will explore how the line between agonistic and antagonistic conflict should be drawn. It starts with Chantal Mouffe’s conception of this boundary and her insistence on the necessity of such limits between acceptable agonistic political behavior and unacceptable antagonistic relations.<sup>78</sup> The first part of this section will critically reflect on the utility of Mouffe’s suggestion that the realm of antagonistic relations is entered once participants of a political conflict reject a shared symbolic space characterized by acceptance of the values of equality and liberty and argues that Mouffe’s approach fails to take sufficiently seriously the risks of agonistic speech. I will show that Mouffe’s proposal is internally inconsistent and, in its current form, not able to perform the important function of distinguishing between agonistic and antagonistic forms of political action.

In the second part of this section, I propose an account of the limits of agonism that uses Honig’s insistence that every consensus produces remainders to radicalize Mouffe’s view of a shared symbolic space. I argue in favor of conceptualizing this space differently from Mouffe. Instead of seeing this space as being characterized by shared values that may not be departed from, it is belonging within this space that is seen as the very object of contestation. Who is inside and who is outside this space of the political community is what is at stake in agonistic politics and, as such, in order for politics to *remain* agonistic, this conflict must always remain possible. In other words, agonistic politics requires two things: first, the boundary between the inside and the outside of this shared space is drawn and, second, that this boundary always only be drawn as a temporary and thus permeable boundary. Unlike Mouffe, I show that where the boundary is drawn between the inside and the outside cannot be evaluated based on the insistence of shared liberal democratic values, but rather only based on whether the second criteria – the temporary and permeable nature of the boundary – is respected. I proceed to analyze the crisis discourse used by the Socialist Party and the Freedom Party with this distinction between agonism and antagonism. To do so, I develop the notion of a continuum of risky illocution in order to position these uses of

crisis discourse based on whether they move towards or away from antagonistic relations. This has the function of emphasizing that even agonistic speech, speech that does not directly call for the eradication of the other, carries with it the risk of antagonism.

### ***Finding the frontier between agonism and antagonism***

In this section, I examine Mouffe's approach to the risks attendant in agonism and attempt to remedy her reliance on a shared liberal-democratic political space, a reliance that fails to take seriously the necessity of deep conflict over political values and the risks inherent therein.<sup>79</sup> I argue that there can be limits to the acceptable use of crisis discourse that are based on agonistic values themselves. In doing so, my aim is not to reject Mouffe's view of agonism but rather to show how her own agonistic convictions can sustain a theory of responsible use of crisis discourse, without either relying on consensual liberal democratic ideals of a common core of shared substantive values or accepting any and all type of struggle.

Mouffe is clear that adhering to agonism does not imply accepting all demands as legitimate.<sup>80</sup> She distinguishes between those demands which can be accepted as a legitimate part of the agonistic debate and those which should be excluded, not because they are morally unacceptable but because "they challenge the institutions constitutive of the democratic political association."<sup>81</sup> While Mouffe also acknowledges that contestation of the nature of these institutions is, at the same time, the very thing that agonism sees as core to political debate, she argues that this contestation can only take place if the actors engaged in such contestation share a symbolic space, characterized by the ethico-political values of liberty and equality.<sup>82</sup> In her view, the conflict and contestation valued in agonism is a conflict and contestation that must occur within the bounds of agreement on these values, even while the *meaning* of these values is disputed. In her words, "a line should ... be drawn between those who reject those values outright and those who, while accepting them, fight for conflicting interpretations."<sup>83</sup> Accordingly, once the political debate moves outside of this shared symbolic space, adversaries turn into enemies and agonism into antagonism. Those who reject these values "cannot form part of the agonistic space" and thus can only be dealt with as the 'enemy' relevant for antagonistic relations.<sup>84</sup> At this moment, politics is no longer possible and instead human interaction is characterized by violence and domination.

Mouffe thus attempts to draw a clear line between agonistic politics and antagonism by pointing to the importance of accepting the values of equality and liberty. According to Mouffe, agonism is characterized by conflicts over the meaning of these values, while antagonism occurs when these values are themselves rejected.<sup>85</sup> There are two problems with this approach. Firstly, it brings Mouffe very close to the consensual deliberative democracy she critiques and, secondly, it fails to acknowledge that the very questions of who have liberty and how much and who are equal are at the core of the political. I will explain each critique in turn.

Mouffe's emphasis on the need for a shared symbolic space characterized by the acceptance of the values of equality and liberty seems to contradict the importance she places on deep conflict, conflict that supposedly includes the foundational values of a political community. Mouffe's need for a shared consensus characterized by particular values whose acceptance (but not meaning) are beyond the pale of political contestation within which citizens can engage in agonistic politics mirrors the consensus-focused forms of democracy she aims to critique.<sup>86</sup> Mouffe's solution is particularly problematic because it implies that political opponents who explicitly reject and attempt to bring change to the shared symbolic space are risking devolution into antagonism. Yet, this very change is what agonism says politics is about. If Mouffe's perspective on agonism requires the rejection of political projects that call for changes to accepted political ideals and institutions, little room is left for any attempts to change the 'rules to the game', attempts that agonists profess to accept – and promote – as part of a healthy political encounter. Mouffe's conception of the limits of the acceptable appears preclude that very political struggle from taking place, resulting in the end in a "politics of minor stakes"<sup>87</sup> in which contestation is only accepted if it does not strike too deeply at the heart of the existing hegemonic constellation.

Mouffe explicitly acknowledges that her approach to the frontiers of the acceptable are informed by the liberal democratic principles that are constitutive of "our form of life".<sup>88</sup> Mouffe's frontier is in essence not one between agonism and antagonism, but between the liberal democratic principles that currently inspire the ethico-political nature of contemporary western political institutions on the one hand and threats to liberal democracy on the other. From this perspective, we can say that Mouffe is attempting to broaden the register of acceptable political discussion *within* political liberalism, arguing contra many deliberative democrats that the definition of reasonable pluralism cannot be determined based on rationality or morality, but is rather always an object of political contestation.<sup>89</sup> In the end, Mouffe's approach is far less a determination of the difference between legitimate and illegitimate political demands and action in general and far more a determination between legitimate and illegitimate *liberal democratic* political demands and action. By taking the values of liberty and equality as an unassailable starting point she positions the 'acceptable' only within the realm of liberal democratic political possibilities. This approach may certainly be a valuable addition to liberal democracy, but fails to provide much guidance on where the line can be drawn between agonistic politics in general (without any particular allegiance to liberal democracy) and the antagonism agonists try to keep at bay.

Moreover, I argue that Mouffe's distinction reveals a failure to account for the fact that debates over the very appropriateness of liberty and equality in particular circumstances are at the core of the political choices we make. This failure makes her distinction both under- and over-inclusive, and thus lacking in utility. Let me explain this claim: On the one hand, this distinction lacks the ability to recognize the threat to agonism posed by political actors who pay lip service to the values of liberty and equality, all the while using these professed

values to justify the destruction of the other. Surely a person calling for the death of all monarchs based on the reasoning that all people are equal and the very existence of monarchy threatens that equality would not still fall within the acceptable limits of agonism, despite the fact that the person advocated for such a measure on the basis of equality. In this way, Mouffe's focus on adhering to the values of liberty and equality fails to accurately classify those who engage in antagonistic behavior as antagonistic, thus being an under-inclusive test. On the other hand, this distinction is over-inclusive, because if lip service is not enough to prove one's adherence to these values, then the whole matter becomes a question of which engagements fit within the *acceptable range* of a debate over the meaning of these values and which fall outside the acceptable range.<sup>90</sup> And if *this* is actually the question, and not whether one uses the terms equality and liberty with which to frame one's demands, then it does not automatically matter whether one rejects the use of these terms. It is possible that political speech rejects equality or liberty on some register, while not necessarily being antagonistic. One can, for example, very well argue that inequality is appropriate in a certain circumstance and still be found adhering to the broader value of equality overall. For example, one can argue that someone who is convicted of murder should be deprived of liberty and lose some equality *viz-a-viz* someone who has not been convicted of murder, and still conceivably not be considered as ushering in antagonistic relations from Mouffe's perspective. Moreover, the whole agonistic political endeavor of constituting a people, a 'we' over and against a 'them', implies *some* inequality on *some* register. Thus to say that agonistic political behavior must accept these values of liberty and equality seems to strip agonism of much of the analytical value that Mouffe believes it has.

These two flaws in Mouffe's approach ultimately lead her to underemphasize the real challenge inherent in agonism itself: the very present risk that the (politically necessary) creation of the 'other' – and thus of some measure of inequality – leads to the idea that the other must be destroyed. While Mouffe certainly acknowledges this risk, her subsequent focus on the need for 'common values' distracts from its primacy. As the next part will show, this is when relationships become antagonistic and is the point at which conflict no longer promotes the political, but destroys it.

### ***A continuum of risky illocutions***

What are the actual boundaries between agonistic politics and antagonistic violence? I argue that the answer to this question is implicit in Mouffe's view of agonism, but requires a radicalization of the concept of Mouffe's shared symbolic space to empty it of the adherence to any particular set of political values. Here it is worthwhile to examine what Mouffe sees as the function for this shared symbolic space – how exactly, in Mouffe's understanding, a shared symbolic space prevents antagonism. Mouffe sees the shared ethico-political values as a 'common bond' that ensures political actors do "not treat their opponents as enemies to be eradicated."<sup>91</sup> While engaged in conflict with each other, this common bond leads political actors to "see themselves as belonging to the same political association"<sup>92</sup> and to recognize that all conflict must take place within this shared space. What Mouffe is getting

It is that the us/them divisions and exclusions that agonistic politics acknowledges as a legitimate part of politics, must not lead to the other being expelled from this shared space or, in her words, being 'eradicated'. The reason for Mouffe's insistence on this particular *inclusion* is not despite her acknowledgement that *exclusion* cannot be overcome<sup>93</sup> but rather *because of* agonism's ontological starting point that exclusion is the inevitable result of any conception of the 'people' and of any hegemonic ordering based thereon. It is this inherent exclusion that requires a normative appreciation for pluralism.

These insights are, however, underemphasized in Mouffe's thoughts on boundaries. Other agonistic thinkers place more importance on preserving pluralism. Bonnie Honig makes this clear in her thoughts on the inevitable remainder of politics. Honig calls attention to the fact that no one conception of 'the people' can ever fully incorporate all individuals and groups. There will always be remainders that can never completely be included in the hegemonic 'we'. It is this impossibility of completeness that leads to the normative stance that agonistic conflict must preserve possibilities for those left out of the hegemonic order to contest their exclusion and demand a new constellation of 'the people', one that will be more inclusive of this excluded group (but, inevitably, will exclude some other identities).<sup>94</sup> No regime or ideology should ever try to subdue or eliminate the contestation of who belongs and who does not, since to do so would silence those whose interests and identities inevitably cannot be successfully incorporated into that regime. In other words, those excluded from 'the people', must not be so finally excluded that they have no way of challenging their position. The distinction between the 'we' and the 'they' must always remain open to future contestation and any attempt to impose a fully unified and conflict-free society can only end in totalitarianism.<sup>95</sup> Contra to Mouffe's interpretation of Honig's work on this issue,<sup>96</sup> Honig is not arguing that agonism requires a cessation of othering or the end of hegemony, but that othering and hegemony must never be final. It is not that Honig thinks that exclusion of hegemonic closure can be avoided, but simply that this closure must not be total. It must be acknowledged that 'the people' is never fully constituted, that certain individuals and groups fall outside the 'people' and that 'the people' must always be open to contestation re-constitution by shifts in the us/them distinction. In this way, Honig's attention to the remainder of politics provides an important perspective when thinking about the limits of agonism.

This attention to preserving the possibility of contesting political belonging allows us to radicalize Mouffe's idea of a shared symbolic space. The boundary between agonism and antagonism is not about those who reject any particular shared values, but deals with the question who can participate in the contest about who belongs in the political community, in the shared symbolic space – whatever its contents might be. The line between agonism and antagonism is a division between, on the one hand, exclusion in a way that allows for contestation of that exclusion versus, on the other, exclusion without any possibility to challenge the exclusion. In other words, for the contest to remain open, the excluded individual or group must not be posited as never being able to enjoy the rights, liberty and

equality of those within the political community, and the excluded individual or group must not be stripped of all ability to continue to struggle for those rights, liberty and equality. The point is not so much that all legitimate participants in the agonistic debate must frame their arguments in terms of liberty or equality or even that they must accept these values as the aim of political life, but rather that no legitimate participant can put forth demands that would entail stripping the other of the *potentiality* of enjoying whatever rights are granted to the political community constructed by that participant. To state Mouffe's ideas with a slightly different emphasis, the othering must not lead to the other being seen as an enemy to be permanently excluded from the shared symbolic space, while at the same time acknowledging that othering always attempts to *temporarily* exclude the other from that space. This conclusion, that there must always be space open for contestation of the boundaries of the shared space and who belongs inside and out – *by* those who are considered the other – necessitates that defeat must only ever be political – and not defeat of the other's very existence. Agonism accepts that an individual or group can be *temporarily*, discursively, placed outside of the political community but this othering must never be so complete that the individual or group has no way of reentering the political community. The possibility must remain open for the 'people' to be *reconstituted* in such a way that the other becomes one of the 'us'. The realm of antagonism, on the contrary, is characterized by the discursive creation of an other who could never re-enter the political community, an other who has no ability to contest his othering.

In practice, this means that the realm of antagonistic relations are entered as soon as an other is discursively constructed who must be eradicated or expelled from the space of the political – with no possibility to discursively challenge this expulsion. What does this mean for the types of exclusion that politics can legitimately create and those it cannot? We must be clear that such a view does not preclude politics from striving to permanently eliminate certain *behaviors* from the political community (think for example of murder, rape or pedophilia). The concern is, thus, not so much that such activity is othered – even if permanently. What is vital, though, is that in aiming to eliminate certain behaviors, the individuals who commit those behaviors are not constructed as someone or something to be permanently excluded from the political community. Thus, whereas attempts to permanently exclude behavior can be accepted as part of normal politics, this can never be the case for exclusion of the people 'behind' the behavior.

There are some similarities between my emphasis on agonism as precluding a permanent defeat of the other and Breen's attitude of care towards the enemy. Breen explains that the enemy will be seen as one to be defeated but that this defeat may only be in "respect to that which he represents a serious threat, not in terms of the totality of his person."<sup>97</sup> Yet, my approach differs in two important ways from that of Breen. First, I reject Breen's assumption that by only focusing on the threat posed by the other, and not the totality of the person, antagonism can be avoided. In fact, all too often antagonism is triggered by the conviction (however errant) that it is the very person of the other himself who poses the threat. It is the (however mistaken) belief that the other cannot be separated from the threat

that often ushers in the perceived necessity of eradicating the other, as a person. Thus, instead, I argue that the emphasis must simply be placed on the distinction between behavior and the person as such, while intentionally precluding the possibility that the other as person is ever excluded, no matter how serious the threat the other is perceived as posing. From this it follows that exclusion cannot be based on characteristics that are perceived as unchangeable. If it is a characteristic such as for example race, sex or sexuality that is perceived as posing the threat, and society perceives these characteristics as an unchangeable, inherent part of the person who has them, the individuals targeted could not be separated from those characteristics and thus would be permanently excluded.

Moreover, it is important to note that Breen characterizes *antagonism* as the realm of othering as such, whereas I stress that othering takes place within the limits of acceptable agonistic behavior as well. In my view the boundary then is between agonism on the one hand and antagonism on the other, where agonism is the realm of passionate struggle to defeat the other *politically* and antagonism is the – unacceptable – realm of passionate struggle to defeat the other in their very existence.

This boundary between agonism and antagonism does not mean that political activity that falls on the agonism side of the line is necessarily ‘safe’. There is no risk-free way of doing politics; the instability of politics is irreducible and the possibility of antagonism cannot be eliminated without eliminating the possibility of politics itself.<sup>98</sup> It is, however, possible to identify political activity that moves toward the boundary between agonism and antagonism versus other types of activity that move farther away from that frontier. In this way, within agonistic politics – within the limits of the political – one can position behavior on a continuum between anti-political antagonism (relations that make politics impossible because they end the possibility of contestation) on the one hand and apolitical pluralism (relationships characterized by individual freedom, without any representation of interests as relating to the common good and thus also without any politics) on the other. The area between antagonism and complete pluralism is where politics is possible, is where the *agon* is found. As one approaches the boundary between agonism and antagonism, the risk of antagonism becomes greater and as one moves away from that boundary, the risk of antagonism lessens.

This is not to say that the position farthest from the antagonistic boundary – complete pluralism – is the most desirable position on the continuum. Adherence to an agonistic view of politics does not reject the idea that decisions must be made and that ground must be found (temporarily) for shared political identity. Nor does it mean that closure over meaning should be avoided. And for these decisions and shared political identity, some form of othering is necessary, and thus a move toward antagonism. The necessity of keeping space open for contestation should not be interpreted as a prohibition on political actors aiming to have their claims hegemonically entrenched. The aim of agonism is not to escape hegemony; power and hegemony cannot be escaped and there is no “beyond hegemony.”<sup>99</sup> Neither does agonism require or presuppose politio-socio-legal fields without the

constraints of power on the people living within those fields. What matters is that those being constrained have the possibility to contest and actually change these constraints. The foundation of decisions and the basis of stable ground are not the neutral outcome of a rational deliberation process, but are rather the result of the exertion of power – not in the form of explicit violence, but in the form of hegemonic power. And since these foundations will never represent all people, interests and identities, they must be open to contestation and change, even while functioning as the (temporary) hegemony that politics results in.

Let us now explore what this insight on the boundary between agonism and antagonism means in practice by turning our attention to the most proximate tool of politics – language. As shown above in relation to crisis discourse, it is speaking crisis that not only illustrates, but calls into being, the risk of permanently excluding the other. By focusing on the illocutionary force of crisis discourse, we can evaluate the position a particular use of crisis discourse inhabits on the continuum of risk. Thus, if we go back to the use of crisis discourse by the Socialist Party and the Freedom Party, we can attempt to place the parties on this spectrum. We see that the two parties engaged in different types of othering. On the one hand, the Socialist Party discursively constructed the ‘other’ based on changeable characteristics and behavior, as a group engaged in a particular activity or having a particular amount of wealth (bankers and the very rich). While ‘bankers’ and the ‘very rich’ are more than just behaviors, they are not characteristics that are perceived as an unchangeable part of their holders’ identities. This is reflected in the measures proposed by the Socialist Party, which relate to changing particular activities the rich engage in to promote their wealth (for example the Socialist Party’s plan to deter bonuses by taxing bonuses retroactively). These proposed changes do not target specific, unchangeable identities and do not have the effect of permanently excluding those they target from the ‘people’.

The Freedom Party, on the other hand, defined the other with reference to the indelible identity of ethnicity. The Freedom Party aimed to exclude the Muslim ‘other’ permanently from the political body of the ‘people’, for example by banning all immigration from Muslim countries. Other measures proposed by the Freedom Party, although formulated neutrally and thus not targeting Muslims specifically, still had the effect of permanently excluding those they affect from the political community, for example by excluding those who have double nationality from representative government functions or by stripping Dutch citizens with double nationality of their Dutch citizenship if they commit a crime. This difference in how the two parties spoke crisis, puts the Socialist at a different position on the continuum of risk than it does the Freedom Party. While the Socialist Party certainly engaged in othering (even going so far as to speak of bankers as insects) and calls for fundamental change, their discourse stayed more removed from constructing the other as something to be *permanently* excluded from the realm of political contestation than that used by the Freedom Party. The Socialist Party constructed the other based not on characteristics perceived as unchangeable but on behavior and it proposed changes that did not exclude this other from the political community. The Freedom Party’s use of crisis

discourse, however, crossed the border into the antagonistic. First, the Freedom Party framed the ‘other’ based on the unchangeable characteristic of ethnicity. Next, the Freedom Party used its crisis discourse to call for changes that would permanently exclude this other from the Dutch community, such as the party’s demand to stop immigration from “Islamic countries.” This combination of constructing an other based on the very identity of the other instead of his behavior, along with calls for change that exclude the ability of the other to gain admittance to the political community, crossed the line from agonistic to antagonistic speech.

## 4 Conclusion

This article sheds light on agonism – and its limits – by viewing crisis discourse as an agonistic political practice. By viewing the speech act of crisis discourse through the lens of agonism, I interpret crisis discourse’s ability to create us/them divisions and call for change as part and parcel of the agonistic political struggle. As the discourse used by the Socialist Party and the Freedom Party shows, crisis discourse was employed during the European Sovereign Debt Crisis to (re)create the ‘people’, albeit in very different ways by the two parties, and to call for change in economic and social structures. The Freedom Party’s calls in particular highlighted a certain uneasiness in agonism itself. The Freedom Party’s constitution of the people by distinguishing between a native Dutch, non-Muslim populous on the one hand and the EU and Muslims on the other, and the Freedom Party’s claims that the discursively created other threatened the very identity of the people raised the question where agonists would place limits on speaking crisis. Certainly, agonism always presupposes a type of othering and sees deep change to the political community as a legitimate aim of political activity, yet at the same time Mouffe in particular stresses that conflict cannot be without any bounds. Mouffe’s insistence that *antagonism* must be avoided in political struggle gives us a place to start inquiring into these potential limits, although Mouffe herself fails to expand upon these limits from an agonistic perspective. I argue instead that the issue of limits can be adequately addressed by reference to the aim of agonism itself: to preserve struggle over political processes and norms. What distinguishes agonism from antagonism is thus not a *lack* of othering or exclusion but rather the way in which this other is constructed. Contra Mouffe, I do not see a role for values of liberty or equality here. Rather, I emphasize the importance of ensuring the *temporary* and *reversible* nature of exclusion. Agonism requires that the other, even though certainly excluded from the people in one particular political moment, retains the ability to contest and reconstitute the ‘people’, in the next political moment. The constant possibility of struggle must be preserved in order for othering to remain agonistic and to avoid the dangers of antagonism.

Based on these insights into the limits of agonism, I propose viewing political activity – and particularly the use of crisis discourse – as occupying particular places on a continuum of risky illocutions. On the one end of this continuum is antagonism and on the other complete pluralism. The space in between is where politics takes place; where agonism can be found.

This continuum gives us the tools to evaluate political speech from an agonistic perspective and to acknowledge and manage the risk inherent in political behavior. At the same time, this continuum identifies a clear outer limit of acceptable political speech: once the elimination of the other – *qua* human – is called for or the boundaries of the people are created based on unchangeable characteristics, the agonistic morphs into the antagonistic. From this perspective, the Freedom Party’s use of crisis discourse to construct an other based on (perceived) unchangeable characteristics and to argue for the permanent removal of the other from the Dutch political community rapidly approached the antagonistic end of this continuum. On the other hand, while the Socialist Party also engaged in a harsh rhetorical campaign of crisis, it did so without constructing the other based on inherent characteristics and instead focused on changeable behaviors. In this way, the Socialist Party used a crisis discourse that remained more securely in the space of the political.

This study’s view of crisis discourse as an agonistic speech practice provides a tool to evaluate the use of crisis discourse in current political discourse. It proposes a measure for critique of crisis discourse decoupled from whether the discourse justifies for deep, radical change to the status quo of legal of political structures, and from whether the discourse creates an other. Indeed – true political discourse will always create an other and it is the very struggle over the foundations of the political community that characterizes true political interaction. Moreover, in a western political landscape increasingly (once again) characterized by anti-establishment politics that presume and construct a threatening other, often based on views of the social that are not based on scientific facts, this agonistic view calls attention to the fact that crisis discourse is constructive, not constative; it is a speech act that aims to create the reality it claims already exists. Thus, instead of ‘fact-checking’ or accusations of irrationality, this article calls for evaluative criteria of crisis discourse based on whether the reality it aims to create is one in which the other is permanently excluded from the political community. What is important in this view, is not shared values or even a shared political space. Rather, what matters is that the political space of the ‘people’ – however contested membership therein might be – remains a place that the other can re-enter. The contestation itself must remain possible, and permanent exclusion from the political space is unacceptable.

## Notes

<sup>1</sup> For a good overview of the chronology and legal implications of these early months of the Eurozone debt crisis, see Claire Kilpatrick, “Are the Bailouts Immune to EU Social Challenge Because They Are Not EU Law?,” *European Constitutional Law Review* 10 (2014): 393-421 and Claire Kilpatrick, “On the Rule of Law and Economic Emergency: The Degradation of Basic Legal Values in Europe’s Bailouts,” *Oxford Journal of Legal Studies* 35 (2015): 325-353.

<sup>2</sup> See for example Virginia Mayo, “Eurozone Seeks to Stop Debt Crisis Domino Effect,” *CBS News*, 11 July 2011, <http://www.cbsnews.com/news/eurozone-seeks-to-stop-debt-crisis-domino-effect/>; Giles Tremlett, “Fears Portugal May Be Next to Fall in Debt Crisis,” *The Guardian*, 28 April 2010, [https://www.theguardian.com/business/2010/apr/28/portugal-debt-fears-mount](http://www.theguardian.com/business/2010/apr/28/portugal-debt-fears-mount); and Elena Moya, “Spain Seeks to Calm Fears it is ‘Next Greece’ as European Markets Plunge,” *The Guardian*, 5 February 2010, [https://www.theguardian.com/business/2010/feb/05/spain-bid-calm-turmoil](http://www.theguardian.com/business/2010/feb/05/spain-bid-calm-turmoil).

<sup>3</sup> Ed Wingenbach, *Institutionalizing Agonistic Democracy: Post-Foundationalism and Political Liberalism* (Surrey: Ashgate, 2011), 6.

<sup>4</sup> Andrew Schaap, “Introduction,” in *Law and Agonistic Politics*, ed. Andrew Schaap (Surrey: Ashgate, 2009), 1.

<sup>5</sup> Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000), 96-98.

<sup>6</sup> Chantal Mouffe, *On the Political* (Oxfordshire: Routledge, 2005), 21.

<sup>7</sup> See for example Schaap, “Introduction,” Wingenbach, *Institutionalizing Agonistic Democracy* and Robert W. Glover, “Games without Frontiers? Democratic Engagement, Agonistic Pluralism and the Question of Exclusion,” *Philosophy & Social Criticism* 38 (2012).

<sup>8</sup> William E. Connolly, *Pluralism* (Durham: Duke University Press, 2005).

<sup>9</sup> Wingenbach, *Institutionalizing Agonistic Democracy*.

<sup>10</sup> Mouffe, *On the Political*, 121.

<sup>11</sup> Laura M. Henderson, “Crisis Discourse: A Catalyst for Legal Change?,” *Queen Mary Law Journal* 5 (2014).

<sup>12</sup> Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca: Cornell University Press, 1993), 84.

<sup>13</sup> The operative word here is ‘successful’, as speech acts are not always felicitous. Speech acts – and thus also crisis discourse – can go wrong in two senses. First, a speech act can fail because it is composed in a way that is not in adherence with the societal, legal or political expectations for that particular speech act. If an event is not framed as a threat, or if a threat is not framed as necessitating structural change, the speech act cannot be considered crisis discourse, because it has not adhered to the typical structure of this type of speech. Second, even if speaking crisis as a speech act occurs (because it adheres to the expectations of the particular type of speech and, in doing so, by the very act of saying something calls something into being) it can fail to cause the reaction it aims to create. Thus, an event might be framed as a threat that necessitates structural change (thus meeting the requirement for a felicitous illocutionary act) but consequently fails to actually *cause* that structural change. This second type of failure is a failure of persuasion, See J.L. Austin, *How to Do Things with Words: The William James Lectures delivered at Harvard University in 1955* (Oxford: Clarendon Press, 1962).

<sup>14</sup> Michel Foucault, ‘Society Must Be Defended’: *Lectures at the Collège de France, 1975-1976*, trans. D. Macy (New York: Picador, 2003), 24.

<sup>15</sup> Although I will use the term ‘European sovereign debt crisis’ for the remainder of this article as a short-hand for the complex set of events and reactions in the Eurozone countries starting in the first half 2008 with concerns about Greek ability to pay off state debt, it must be noted that this label in itself masks the contestation over the existence of a crisis and whether such a crisis has to do with sovereign or private debt (see Mark Blyth, *Austerity: The History of A Dangerous Idea* (Oxford: Oxford University Press, 2013 (2015)), 5-7).

<sup>16</sup> Honig, *Political Theory and the Displacement of Politics*, 3.

<sup>17</sup> Friederike Schultz and Julia Raupp, “The Social Construction of Crisis in Government and Corporate Communications: An Inter-Organizational and Inter-Systemic Analysis,” *Public Relations Review* 36 (2010).

<sup>18</sup> Friederike Schultz and Julia Raupp, “The Social Construction of Crisis” and Alon Lischinsky, “In Times of Crisis: A Corpus Approach to the Construction of the Global Financial Crisis in Annual Reports,” *Critical Discourse Studies* 8 (2011).

<sup>19</sup> Lischinsky, “In Times of Crisis,” 154.

20. Lischinsky, "In Times of Crisis," 154.

21. Robert R. Ulmer, Timothy L. Sellnow and Matthew W. Seeger, *Effective Crisis Communication: Moving From Crisis to Opportunity* (Los Angeles: Sage Publications, 2011), 211-222.

22. Colin Hay, "Crisis and the Structural Transformation of the State: Interrogating the Process of Change," *The British Journal of Politics and International Relations* 1 (1999).

23. See for example Jack Holland, "From September 11<sup>th</sup>, 2001 to 9-11: From Void to Crisis," *International Political Sociology* 3 (2009); Jack Holland & Lee Jarvis, "'Night Fell on a Different World': Experiencing, Constructing and Remembering 9/11," *Critical Studies on Terrorism* 7 (2014); and Arjen Boin, Paul 't Hart, and Allan McConnel, "Crisis Exploitation: Political and Policy Impacts of Framing Contests," *Journal of European Public Policy* 16 (2009).

24. See, among others, Lischinsky, "In Times of Crisis;" Antoon De Rycker and Zuraidah Modh Don, ed., *Discourse and Crisis: Critical Perspectives*, (Amsterdam/Philadelphia: John Benjamins, 2013); and Yiannis Mylonas, "Crisis, Austerity and Opposition in Mainstream Media Discourses of Greece," *Critical Discourse Studies* 11 (2014).

25. J.L. Austin, *How to Do Things with Words*, 4-6.

26. My conception of discourse analysis is heavily influenced by Nelson Phillips and Cynthia Hardy, *Discourse Analysis: Investigating Processes of Social Construction*. Sage University Paper Series on Qualitative Research Methods, Vol. 50. (Thousand Oaks, CA: Sage, 2002).

27. This was, at least, the case in the time period I study here.

28. Lischinsky, "In Times of Crisis," 155.

29. Holland & Jarvis, "'Night Fell on a Different World,'" 17. This insight into discourse's ability to define problem and solution stems originally from Benford and Snow's frame analysis, which distinguishes diagnostic from prognostic frames, see Robert D. Benford and David A. Snow, "Framing Processes and Social Movements: An Overview and Assessment," *Annual Review of Sociology* 26 (2000).

30. Ruth Wodak and Jo Angouri, "From Grexit to Grecovery: Euro/crisis Discourses," *Discourse and Society* 25 (2014): 418.

31. Socialistisch Partij, "Samen de Crisis te Lijf" ("Fighting the Crisis Together"), 14 January 2012, <https://www.sp.nl/opinie/emile-roemer/2012/samen-crisis-te-lijf>.

32. Socialistisch Partij, "Samen de Crisis te Lijf."

33. Socialistische Partij, "Nieuw Vertrouwen: Verkiezingsprogramma SP 2013-2017" ("New Faith: Election Programme Socialist Party 2013-2017"): 7, <https://www.sp.nl/sites/default/files/sp-verkiezingsprogramma-nieuw-vertrouwen.pdf>.

34. Socialistische Partij, "Nieuw Vertrouwen," 5.

35. Partij voor de Vrijheid, "De Agenda van Hoop en Optimisme. Een Tijd om te Kiezen: PVV 2010-2015" ("The Agenda of Hope and Optimism. A Time to Choose: Party for Freedom 2010-2015"): 21, [https://www.parlement.com/9291000/d/2010\\_pvv\\_verkiezingsprogramma.pdf](https://www.parlement.com/9291000/d/2010_pvv_verkiezingsprogramma.pdf).

36. Partij voor de Vrijheid, "De Agenda van Hoop en Optimisme," 5.

37. Partij voor de Vrijheid, "Hún Brussel, Óns Nederland: Verkiezingsprogramma 2012-2017" ("Their Brussels, Our Netherlands: Election Programme 2012-2017"): 21, [https://www.parlement.com/9291000/d/2010\\_pvv\\_verkiezingsprogramma.pdf](https://www.parlement.com/9291000/d/2010_pvv_verkiezingsprogramma.pdf).

38. Partij voor de Vrijheid, "Hún Brussel, Óns Nederland," 11.

39. Partij voor de Vrijheid, "Hún Brussel, Óns Nederland," 12.

40. Holland, "From September 11<sup>th</sup>, 2001 to 9-11," 290.

41. Hay, "Crisis and the Structural Transformation of the State," 329.

42. Hay, "Crisis and the Structural Transformation of the State," 328.

43. Hay, "Crisis and the Structural Transformation of the State," 331.

44. Socialistisch Partij, "Samen de Crisis te Lijf."

45. Socialistische Partij, "Nieuw Vertrouwen," 5.

46. Socialistische Partij, "Roemer: 'Ons Belastingstelsel is een Kopstoot voor de Gewone Man'" ("Roemer: 'Our Tax System is a Punch in the Head to the Average Man'"), 17 September 2014, <https://www.sp.nl/nieuws/2014/09/roemer-ons-belastingstelsel-is-kopstoot-voor-gewone-man>.

47. Partij voor de Vrijheid, "De Agenda van Hoop en Optimisme," 6.

48. Partij voor de Vrijheid, "De Agenda van Hoop en

Optimisme,” 14. <sup>49</sup> Hay, “Crisis and the Structural Transformation of the State,” 331. <sup>50</sup> Glover, “Games without Frontiers?,” 89-91.

<sup>51</sup> Ernesto Laclau, *On Populist Reason* (London: Verso, 2005), 154-155. See further Bonnie Honig, *Emergency Politics: Paradox, Law, Democracy* (Princeton: Princeton University Press, 2009), 19.

<sup>52</sup> Glover, “Games without Frontiers?,” 88.

<sup>53</sup> Glover, “Games without Frontiers?,” 88.

<sup>54</sup> Mouffe, *On the Political*, 11.

<sup>55</sup> Hay, “Crisis and the Structural Transformation of the State,” 331-332.

<sup>56</sup> Socialistisch Partij, “Samen de Crisis te Lijf.”

<sup>57</sup> Socialistische Partij, “Nieuw Vertrouwen,” 5.

<sup>58</sup> Partij voor de Vrijheid, “De Agenda van Hoop en Optimisme,” 5.

<sup>59</sup> Partij voor de Vrijheid, “Hún Brussel, Óns Nederland,” 21.

<sup>60</sup> Partij voor de Vrijheid, “Hún Brussel, Óns Nederland,” 11.

<sup>61</sup> Andrew Schaap, “Political Theory and the Agony of Politics,” *Political Studies Review* 5 (2007): 61.

<sup>62</sup> James Tully, “The Agonic Freedom of Citizens,” *Economy and Society* 28 (1999): 170.

<sup>63</sup> Mouffe, *The Democratic Paradox*, 113.

<sup>64</sup> Socialistische Partij, “Roemer: ‘Ons Belastingstelsel’.”

<sup>65</sup> Socialistische Partij, “Nieuw Vertrouwen,” 65-67.

<sup>66</sup> Socialistische Partij, “Een Beter Nederland voor Minder Geld: Verkiezingsprogramma SP 2011-2015” (“A Better Netherlands for Less Money: Election Programme Socialist Party 2011-2015”): 8, [https://www.parlement.com/9291000/d/2010\\_sp\\_verkiezingsprogramma.pdf](https://www.parlement.com/9291000/d/2010_sp_verkiezingsprogramma.pdf).

<sup>67</sup> Socialistische Partij, “Kamer Steunt SP: Totaalverbod op Bonussen bij Gesteunde Banken” (“Parliament Supports Socialist Party: Total Prohibition on Bonuses by Banks that Received State Support”), 11 October 2011, <https://www.sp.nl/nieuws/2011/10/kamer-steunt-sp-totaalverbod-op-bonussen-bij-gesteunde-banken>. Interestingly, the Socialist Party was not the only party in favor of the retroactive application of such legislation. The Freedom Party, along with the Green Left (*GroenLinks*) and Labour Party (*Partij van de Arbeid*) also supported retroactive application in this instance, see Author unknown, “Kamer wil Bonusses Steunbanken 100% Belasten” (“Parliament Wants to Tax Bonuses at Banks that Received State Support at 100%”), *Financieel Dagblad*, 22 March 2011, <https://fd.nl/frontpage/Archief/737475/kamer-wil-bonussen-steunbanken-100-belasten>.

<sup>68</sup> Partij voor de Vrijheid, “De Agenda van Hoop en Optimisme,”

<sup>69</sup> <sup>70</sup> Partij voor de Vrijheid, “De Agenda van Hoop en Optimisme,” 11. <sup>70</sup> Partij voor de Vrijheid, “De Agenda van Hoop en Optimisme,” 15. <sup>71</sup> Partij voor de Vrijheid, “De Agenda van Hoop en Optimisme,” 19.

<sup>72</sup> Claudia Aradau, “Security and the Democratic Scene: Desecuritization and Emancipation,” *Journal of International Relations and Development* 7 (2004).

<sup>73</sup> Socialistische Partij, “Nieuw Vertrouwen,” 5.

<sup>74</sup> Socialistische Partij, “Een Beter Nederland voor Minder Geld,” 8.

<sup>75</sup> Partij voor de Vrijheid, “Hún Brussel, Óns Nederland,” 21.

<sup>76</sup> Partij voor de Vrijheid, “Hún Brussel, Óns Nederland,” 12.

<sup>77</sup> Partij voor de Vrijheid, “De Agenda van Hoop en Optimisme,” 6.

<sup>78</sup> See for example Mouffe, *On the Political*, 120-123, but also Glover, “Games without Frontiers?,” 90.

<sup>79</sup> Keith Breen, “Agonism, Antagonism and the Necessity of Care,” in *Law and Agonistic Politics*, ed. Andrew Schaap (Surrey: Ashgate, 2009), 137-140.

<sup>80</sup> Mouffe, *On the Political*, 120.

<sup>81</sup> Mouffe, *On the Political*, 120-121.

<sup>82</sup> Mouffe, *On the Political*, 121.

<sup>83</sup> Mouffe, *On the Political*, 121.

<sup>84</sup> Chantal Mouffe, “Agonistic Democracy and Radical Politics,” *Pavilion* (2014), <http://pavilionmagazine.org/ chantal-mouffe-agonistic-democracy-and-radical-politics/>

<sup>85</sup> Mouffe’s approach to antagonism in her early work with Ernesto Laclau seems to differ somewhat from the conception of antagonism she discusses later (the approach presented here). In *Hegemony and Socialist Strategy* for example, her discussion of antagonism (with Laclau) emphasizes the actual presence of

antagonism in all of society and as *constitutive* for society. See Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (London: Verso, 2014 (1985)), xiv. In *The Democratic Paradox* and *On the Political* however, antagonism is seen only as a *possible* presence in human relations and one that should be tamed. Additionally, antagonism is portrayed more neutrally in her earlier work. Instead of antagonism being the element of existential violence in which one enemy tries to physically eradicate another, an element that thus therefore must be ‘kept at bay, it is discussed in more structural terms as a “witness to the impossibility of a final suture,” the “experience” of the limit of the social.” See *On the Political*, 16 and Laclau and Mouffe, *Hegemony and Socialist Strategy*, 112. In the current text I take Mouffe’s position toward antagonism to be best characterized by her statement in *On the Political*, 20, that while antagonism is an ever- present possibility, it is the task of democracy to “transform antagonism into agonism.”

<sup>86</sup> Breen, “Agonism, Antagonism and the Necessity of Care,” 138.

<sup>87</sup> Breen, “Agonism, Antagonism and the Necessity of Care,” 140.

<sup>88</sup> Mouffe, *On the Political*, 121.

<sup>89</sup> Mouffe, *On the Political*, 121.

<sup>90</sup> Mouffe does acknowledge that the decision whether one’s political activity falls within the realm of respecting the values of equality and liberty is a *political* decision, a decision that will always be the topic of political contestation, but subsequently fails to draw the logical conclusion that, if this is the case, these values cannot add anything to her initial focus on the need to keep the space for political contestation open, see Mouffe, *On the Political*, 121.

<sup>91</sup> Mouffe, *On the Political*, 20.

<sup>92</sup> Mouffe, *On the Political*, 20.

<sup>93</sup> Mouffe, *On the Political*, 121.

<sup>94</sup> Honig, *Emergency Politics: Paradox, Law, Democracy*, 39.

<sup>95</sup> Glover, “Games without Frontiers?,” 89; see also Claude Lefort, *Democracy and Political Theory*, trans.

David Macey (Cambridge: Polity Press, 1988), 13 and Bert van Roermund, “Questioning the Law? On Heteronomy in Public Autonomy,” in *Law and Agonistic Politics*, ed. Andrew Schaap (Surrey: Ashgate, 2009),

122. Lefort theorized that the difference between a democratic and authoritarian state is precisely whether the ‘people’ is seen as a complete, self-transparent whole without any internal divisions. From this perspective, authoritarianism is not the opposite of democracy, but its “pathological form”, as it departs from the ambiguity of the people inherent to democracy.

<sup>96</sup> See for example Mouffe, “Agonistic Democracy and Radical Politics,” and Mouffe, *On the Political*, 131.

<sup>97</sup> Breen, “Agonism, Antagonism and the Necessity of Care,” 145.

<sup>98</sup> Chantal Mouffe, “Deconstruction, Pragmatism and the Politics of Democracy,” in *Deconstruction and Pragmatism*, ed. Chantal Mouffe (London: Routledge, 1996), 9.

<sup>99</sup> Mouffe, *On the Political*, 118.

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[DOI: 10.22609/2.1.2](https://doi.org/10.22609/2.1.2).

# A Theory of Judicial Constitutional Design

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## ABSTRACT

The purpose of this paper is to describe how judges engage in constitutional design, irrespective of legal tradition. I examine in great detail the role of the judge: as a conflict solver, as a member of an institution, as part of the political system and as a human being, for those are factors that intervene in the activities he makes. I later analyze the dynamics that a Constitution can have: the change in their structure conceptualized as interpretation, mutation and resistance and their relation. Interpretation is the determination of the scope of a norm, mutation is the change of meaning without amendment and resistance is a concept that bridges the first two, which is the capacity of the constitutional rule to adapt to the political game and to assume mutations. Finally, these concepts are intertwined in order to show how judges by means of their function, (re)design the Constitution by means of adjudication and policymaking (rule issuance by the stating of precedent).

**Keywords:** Constitutional Design, Judges, Judicial Policymaking

## 1 Introduction

The purpose of this paper is to describe how judges engage in constitutional design, irrespective of legal tradition; to accomplish this, I make use of legal doctrine of both the United States and of Latin America and Europe, for they grasp different aspects of constitutional review and judicial policymaking.

I start with the idea that judges have a political role and can use their function to change the Constitution they interpret to fill its gaps or to serve other purposes; that is, judges do not merely apply the Constitution to a concrete case by means of a deductive or inductive process, they also engage in constitution making.

To understand the nuances of this idea, I examine in great detail the role of the judge: as a conflict solver, as a member of an institution, as part of the political system and as a human being, for those are factors that intervene in the activities he makes. This is what constitutes the core of the first segment of this article. The second part of this study pertains the way in which Constitutions change in their structure, which are conceptualized as interpretation, mutation and resistance and their relation. Interpretation is the determination of the scope of a norm, mutation is the change of meaning without amendment and resistance is a concept that bridges the first two, which is the capacity of the constitutional rule to adapt to the political game and to assume mutations.

Finally, these concepts are intertwined in order to show how judges by means of their function, (re)design the Constitution by means of adjudication and policymaking (rule issuance by the stating of precedent).

## 2 The reality of adjudication

### *1. The judge and his role*

Through history, judges have acted as problem solvers in societies, helping them maintain cohesion by the performance of this role. The concept underlying this endeavor is that of the triad, which is defined by Shapiro as a situation that arises whenever conflict exists in a dyad, that is, a relationship between two persons, and the intervention of a third to resolve it. This is a very universal social pattern that has emerged in almost every place and age.<sup>1</sup>

Alec Stone Sweet advances a theory on how they create governance and adapt it to changes in society; it has three core elements: the dyad, the triad and the normative structure. He describes the dyad as any ““pattern of [direct] exchange” between two individuals or groups”,<sup>2</sup> defining a wide range of human behavior, being the foundation of Society. This relationship has as a normative basis the principle of reciprocity, which links the parties to a “common fate”.<sup>3</sup>



Figure 1.

Because the dyad is an unstable structure and when there is conflict it transforms into a triad incurring into what is called Triadic Dispute Resolution, which is also a primary form of social organization that acts as a guarantor of reciprocity and thus perpetuates the dyad, it is an agent of social change. This can be visualized in the classical triangle posited once by Carnelutti:

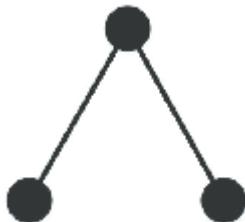


Figure 2.

The main problem of the triad is that when the dispute resolutor gives a holding to the parties, those affected by the decision might perceive it as unjust. Shapiro addresses this issue: “At the moment the two disputants find their third, the social logic of the court device is preeminent... when the third decides in favor of one of the two disputants, a shift occurs from the triad to a structure that is perceived by the loser as two against one. To the loser there ... only the brute fact of being outnumbered...”.<sup>4</sup> This is visualized as follows:



Figure 3.

To combat the perception of unfairness, Carter and Burke say, judges need to justify their approach in their decision, for this might stem from the notion that there is no “right answer”, so legal reasoning is a justificatory endeavor.<sup>5</sup>

Now, to perceive judges solely as conflict solvers is to incur in a misunderstanding of their function. It is true, that judges take part on “triadic dispute solving” when they act as a third party to solve a conflict, but when their holdings become prescriptions for solving future conflicts, the nature of their activities changes. The judges as agents of social order are also law makers, and through this function, they create policy. And because they do so, they cannot be isolated from politics and ideology.

## 2. *Judges as policymakers*

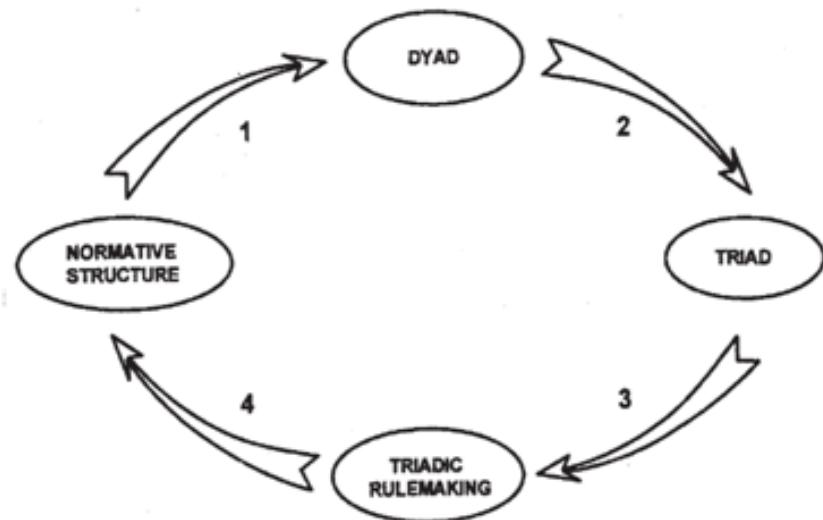
Judges act as agents of the State when there is conflict, and by creating rules on how to solve future conflicts, they act as policy makers. But, the fact that they do so means that they are not as constrained as it may be thought, that is, that they do not always “find” what the law says, but instead, they make it. Shapiro states that whenever the decisions of a judicial system have precedential weight judges policymaking functions, therefore a tension exists between it and the rule of law, that is, the notion that they apply pre-existing law (which has been proven false). So judges deny their policymaking role, and thus, they lie.<sup>6</sup>

Rubin and Feeley, citing Dworkin describe policymaking as “the process by which officials exercise power on the basis of their judgment that their actions will produce socially desirable results”.<sup>7</sup> These authors also seek to stress a difference between policymaking and interpretation, stating that for policymaking, the legal text is a source of jurisdiction, whereas for the latter it serves as the justification of a decision.<sup>8</sup> That is, for policymaking, the legal text is the floor, while for interpretation is the ceiling.

The third element in Stone Sweet’s theory of governance is the normative structure, which he describes as “...the system of rules—or socially constituted constraints on behavior—in place in any community...What I call normative structure is equivalent to what North (1990) calls “institutions,” variously: “the rules of the game,” “customs and traditions,” “conventions, codes of conduct, norms of behavior, statute law, common law, and contracts”...”<sup>9</sup>.

The dyad functions in base of a coordination of the self-interest of the parties by means of reciprocity and a shared view of the future, it is further cohesioned by the normative structure that can help prevent disputes, help the dyad solve them using reciprocity or by helping to constitute the triad. When this is the case, as it was mentioned before, has to face the perception of unfairness of the affected party by the justification of the decision made, which is product of legal reasoning. In the case of adjudication, the triadic dispute resolution is a rule generating activity which is abstract, general, and prospective in nature.<sup>10</sup>

Whenever the judge creates rules in an abstract way he makes policy. These rules feedback into the existing normative system and in this way, there is an adaptation of the existing body of rules to the changes of society. Stone Sweet summarizes the interaction of the elements of this theory with the following illustration:<sup>11</sup>



**Figure 4.**

### 3. The policymaking process

Having clarified that judicial policymaking and doctrine (abstract rulemaking) are synonyms; it is useful to see the process that judges go through in making doctrine. The first two steps involve the existing legal doctrine and the attitudes of the judge and how they interact. Whenever a judge's attitudes clash directly with legal doctrine, these scenarios can happen:<sup>12</sup>

- a) The judge ignores his attitudes and acts within his understanding of doctrine.
- b) The judge ignores legal doctrine and sentences with his attitudes in mind.
- c) The judges *integrates* both his attitudes and existing legal doctrine.

The third element in the judicial policymaking process is called integration, in it, the judges will not try to assure themselves that they are invoking generalized beliefs, but they will be acting more instinctively as part of their ordinary decision-making process. The final step in the judicial policymaking process is coordination, which involves the propagation of the idea that comes from the integration of attitude and doctrine that takes place in a judge's mind. This propagation can be horizontal or vertical, the first one happens when an idea is communicated among peers, and the second when the idea is transmitted from a superior to inferiors within a hierarchical structure.<sup>13</sup>

These topics will be revisited in later parts of this study, when aspects of constitutional design are touched; however, it is important to lay out the role of policymaking of the judges as prolegomena to this discussion.

### 4. Judges as members of an organization

In this section, it will be studied how judges act in an institutional context, and how their behavior is shaped by being part of a larger organization of individuals with a set of goals. North defines institutions as “...the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction”.<sup>14</sup> Because they seek to influence human behavior, these structures provide incentives of varying nature, institutions also shape societies, reduce uncertainty by providing a structure.<sup>15</sup>

North defines organizations as a “group of individuals bound by some common purpose to achieve objectives...”<sup>16</sup>, they can be of political, economic and social nature, among others and in seeking to accomplish their objectives can trigger institutional change.<sup>17</sup>

The Judiciary is both an organization and an institution. It is an institution when one sees the constitutive rules of the organization and those norms that regulate its functions and their scope; it is an organization when one sees the group of men invested to perform adjudicatory functions in the name of the State. The way judges are incorporated into an organization can vary from one legal system to the other, and it depends upon factors like legal culture, size of population, history, budget, and many others.

For example, in France there is a historical distrust of judges, for in the times of the monarchy, they were instruments of repression and of securement of the privileges of the elite. As a consequence, there is no mention of judicial branch but a “judicial authority”<sup>18</sup> and there are three systems of courts: one that has jurisdiction over private law whose main court is the Court of Cassation, one that has jurisdiction over administrative law which is the Council of State and the Constitutional Council, which handles exclusively questions of constitutionality.

In civil law tradition, it is common for the judiciary branch to have a career in which aspirants go through a hierarchical process of training that will certify their capability of imparting justice as judges or magistrates.

In the American judiciary, the institutional structure is very different: in many states, judges are elected, on the federal level, judges are selected in a political process from a pool of professionals that include public servants, litigators and there rarely is an opportunity of ascending to a higher post. But even with this loose structure, there is an organizational frame of mind within judges, because they carry out the same functions and feel integrated into the same structure, also, due to the publication of opinions and the several opportunities of feedback in which they can coordinate their ideas and positions.<sup>19</sup>

##### *5. Judges as part of the political system*

Once that the role of judges has mostly been defined, it is useful to see how judges carry out their function in the midst of the political game, that is, within the constant struggle for the allocation of power and the implementation of policy. Karl Loewenstein defines power as the function of making and deciding policy, and creates a distinction between those that exercise power (“power holders”) and those that are the recipients of such activities (“power addressees”).<sup>20</sup>

Because it has been said that the judges is a policymaker, it can be understood that he is a power holder, and the dyad over which he presides are the power addressees, and therefore he is a participant (be it as an individual power holder, or as member of an organization) in the political system. Within the political struggle, it can be understood that law is the product of an ideological clash, for the legislative process brings about debate and negotiation regarding the content of a norm. Because a law is not self applicable, it has to be interpreted by the organs charged with its execution, which are usually the executive and its agencies and the judiciary.

Kennedy defines ideology as “universalization project of an ideological intelligentsia that sees itself as acting “for” a group with interests in conflict with those of other groups...”<sup>21</sup> The members of the intelligentsia can argue the ideology before legislatures, administrative agencies and judges when the ideological issues are legal.<sup>22</sup>

To him, the intelligentsia is formed by the “people who operate the ideology, who develop it, apply it, and change it sometimes radically, over time...”,<sup>23</sup> because of this mutability ideology can be different from the interests that fuel it, but not completely autonomous. Ideology is defined by the tensions that exists between those groups that form the intelligentsia, which ends up permeating the legal materials.<sup>24</sup>

These concepts reinforce the idea that to determine the content of the rule of law- be it by enacting norms or by interpreting them- there is an ideological struggle, that is, different interest groups support the projects that “universalize” through their values and principles and materials, their interests and their implementation.

A legal question can be structured in two ways: either it is a deductive or a policy argument. On the first case, the meaning of a norm is ascertained by a logical, analytical or semantic process, which excludes ideology. On the other hand, policy arguments presupposes that deduction is not entirely applicable, that is, policy is applied under the notion that the rule in which it is contained is desirable under a set of social or institutional values.<sup>25</sup>

Finally, Kennedy states that the basis for policy argument is on a “force field” decision process, which has the following components:<sup>26</sup>

- a) More than one policy is likely to apply to a question of law, and the policies are perennially (though not necessarily) in conflict.
- b) Rules (subrules) represent compromises of conflicting policies, “drawing the lines” that “gives” more or less to each affected interest, right or principle.
- c) For any given policy question, there will be an indefinitely large number of possible rules, each differing from the others in how much it responds to each policy.
- d) In selecting among the possible rules that would settle the question of law, the judge has to “balance” the conflicting policies.

In deciding a case, the judge will decide the applicability of these arguments by weighing the facts of the case and circumstances that constrain argumentation to of one or the other. However, the difference between deduction and policy will not always be clear and the judge can be susceptible to their misapplication.

It is important not to lose from sight the fact that policy aspects in law and its application give way to ideology, that is, a judge, in choosing the policy argument to solve the conflict submitted to his jurisdiction, will do in a way that is akin to his ideology (whether he is conscious of it or not). In the words of the author, policy is a “Trojan horse” for ideology.

#### *6. Judges as human beings*

Having analyzed the role of judges as third party conflict solver, policy maker, member of an institution and partaker in the political system, it is necessary to consider in them an aspect that seldom is recognized in scholarship. *Judges are human beings*.

That is, as every other human being they have been shaped by their circumstances and experience and they have a system of values that help them understand the environment in which they live. They have a perception of things varies from that of other fellow humans, even when they have the same role.

Judge Posner coincides with these notions when he talks about the role that preconceptions have on rational though, for even if they sometimes are inaccurate, they are information and it varies from person to person. He explains them thoroughly:<sup>27</sup>

...these attributes might converge to form a general cast of mind that would in turn generate specific preconceptions that a judge brings to the case. Our perceptions are produced by the interactions between sensory impressions—the impact of the external world on the organs of sense- and a classificatory apparatus in the brain... In other words, people see (literally and figuratively) things differently, and the way in which they see things changes in response to changes in the environment. That is true of judges. As Cardozo said, “We may try to see things as objectively as we please. None the less, we can never see them with any eyes except our own.”

What Posner says holds true: human beings have different perception of things one from the other, and so do judges. Also, there are varying degrees in intelligence, skills and many other attributes among people; this is also applicable to the judiciary. Not all adjudicators are created equal.

The legal training that is required of judges and the institutional requirements of selection can be means to attempt to overcome these differences and offer certain standard of quality to those that seek an adjudicative remedy. Also, the degree of institutionalism assures that there will be some consensus among its elements.

Because human being is relative in its nature, it can be said in agreement with Carter, that there is no “right answer” to a difficult legal problem; however, a judge within his capacity can justify the path taken in making a decision, and after he has done so, his ideas can be held by others of

the same hierarchy and by his inferiors and polished beyond the intended scope. That is, there can be a consensus. Also, it is important to note that the decisions made by judges will also reflect the moral of the time.

Finally, the risks that the dehumanization that the legal process can lead into are also worth of note. Judge Noonan talks of masks as a metaphor of said dehumanization: "By mask I mean a legal construct suppressing the humanity of a participant in the process. Mask is the metaphor I have chosen for such constructs, because the human face is where emotion and affection are visible if not deliberately concealed".<sup>28</sup>

Judges, he acknowledges, in doing their role can be masked for "It may be that the role becomes a mask whenever the purpose of serving others is forgotten; the judge who has forgotten the purpose of justice is almost surely masked".<sup>29</sup>

The masks that judges employ are a consequence of the wear that the legal process can cause in them and the efforts to relieve themselves from it to accomplish their function:<sup>30</sup>

The users of any system-scientific, theological, legal-encounter points where their premises and their practices are inconsistent. These gaps in the system must be bridged or the system changed. To bridge the gaps, those who accept the system employ fictions... fictions are a necessity of law...Masks are a variety of fiction. At the points of a legal system where it is too much to recognize that a human being exists, a mask is employed. The intolerable strain is relieved. It may be supposed that as fictions in general are a necessity, so the subspecies of fictions, masks, are inevitable.

All these factors are important to understand the dynamics of both the interpretation of the Constitution and the policymaking process that judges can undertake.

#### *7. Judges from outer space: A reprisal.*

For the better development of some of the topics developed in past paragraphs, it is quite useful to draw reference from literature, not on grounds of what the great writers have stated about judges, but what have they said about human nature. A most illustrative book in this aspect is *The Little Prince*, written by Antoine de Saint Exupery.<sup>31</sup>

Though it may seem as a simple children's book, it is an introductory guide on human behavior by means of simple examples (perhaps too simple for the taste of grownups) like the relationship between the Little Prince and his rose, or the Little Prince and the fox, which explore love and friendship.

When the Little Prince ventures out of his planet by taking advantage of a migration of wild birds- leaving his two volcanoes and his rose behind- he explores a series of asteroids before arriving on Earth: 325, 326, 327, 328, 329, and 330.

These asteroids were inhabited by a king, a conceited man, an alcoholic (or a tippler in the book), a businessman, a lamplighter and a geographer, and by conversating with them, he gains insight on the activities and motivations of grown ups. It would be interesting to imagine if he had

stumbled with the seldom visited asteroid 331 before arriving to Earth, and that this celestial body would be inhabited by a judge:

The seventh planet was inhabited by a judge, who was clad in a black robe and dusted wig, he was seating behind a desk which was at the same time both simple and imposing.

"Please approach, so that I may hear your cause" said the judge as he saw the little prince.

"Who are you?" asked the little prince.

"I am a judge" said the judge with an air of authority "now, what business brings you before this court?"

"Business?" inquired the little prince.

"Yes" said the judge somewhat impatiently "do you have a conflict for me to solve?"

Unbeknownst to the little prince, was the fact that to judges, all men argue a cause before them.

"Well" said the little prince humbly, "I left my rose at my planet and I miss her".

"Internal conflict is outside my jurisdiction. Do you have an external conflict? That is, one between you and somebody else" said the judge in a terminant tone.

"No, why should I?" answered the little prince puzzled by the question.

"Sometimes, men have conflicts with one another. I solve them as an impartial third party" informed the judge.

"What is "impartial"?" asked the little prince.

"Treating all rivals or disputants equally; fair and just" responded the judge, browsing a thick book as a sign of impatience to the questions of the little prince.

"How can you do that?" asked the little prince.

- "I look at the applicable law and adapted to the facts presented before me to issue my sentence." Said the judge as technical as ever.

"But if you rule one disputant over the other, don't they feel that you are against them?" asked the little prince.

- "As I said, retorted the judge angrily, I am impartial, I just find what the law says on particular issues."

"And how do your sentences solve the problems?" inquired the little prince.

"These holdings help to avoid social conflict as they set a path for similar future controversies to be decided in the same manner by my fellows at the bar ", said the judge in a very formal and scholarly tone.

- "But then you are making laws", said the little prince.

- "I do not legislate, said the judge offended by the words of the little prince, I just solve conflicts."

- "But sir, said the little prince tactfully to appease the judge, if you say one thing, but do another differently, aren't you lying?"<sup>32</sup>

The judge threw a plaque from his desk to the little prince, which missed narrowly, and then turned his seat 180 degrees. The little prince looked at the former projectile; it read "Hon. Hercule Main".<sup>33</sup>

"The grown-ups are very strange," the little prince said to himself, as he continued on his journey.

Indeed young sir, they are.

### 3 Constitutional dynamics

#### *1. Constitutional interpretation*

Brest defines constitutional interpretation in the following manner: "Constitutional interpretation" comprehends the methods or strategies available to people attempting to resolve disputes about the meaning or application of the Constitution."<sup>34</sup> Who can interpret the Constitution? Walter Murphy responds by saying: "Just about everybody" is a roughly accurate response to the question who interprets. Judges are highly visible interpreters; but every public official sometimes, explicitly or implicitly, interprets the constitution".<sup>35</sup>

If it can be interpreted by anyone, then whose interpretation is definitive? An almost mechanical answer would be that the judges by virtue of judicial review can interpret the Constitution due to the fact that they have taken an oath to uphold the Constitution,<sup>36</sup> however, this affirmation, included in Article VI of the Constitution<sup>37</sup> is general. If the judiciary, according Marbury v Madison<sup>38</sup> can declare laws unconstitutional because it has sworn to uphold the Constitution, what happens to the other branches of the government? They also have a duty to uphold the Constitution, and they must do so, within the scope of their own nature.

When they do, it can be said that they are applying the Constitution and because no law can be applied by itself, then they are making a valid interpretation of the Constitution. Regarding the private citizen, whenever they are contesting the constitutionality of a law or act of government because they consider it in violation to their rights, the interpretation they submit to the judges is one that will carry force if it's taken into consideration. This structure of joint interpretation converges in what Louis Fisher calls the doctrine of "coordinate construction". He says.<sup>39</sup>

Under the doctrine of "coordinate construction," the President and members of Congress have both the authority and the competence to engage in constitutional interpretation, not only before the courts decide but afterwards as well. All three branches perform a valuable, broad, and ongoing function in helping shape the meaning of the Constitution.

Allan Brewer Carias defines the principle of constitutional supremacy as a manifestation of the popular will, and manifests itself as a constitutional right to have to said supremacy;<sup>40</sup> the preamble of the US Constitution gives continuation to the idea.<sup>41</sup> Interpreted harmoniously with the Constitutional preamble, the idea of constitutional supremacy advanced by Brewer gives people the right of applying the Constitution, that is, to see that it is upheld, and with it the possibility of interpreting the Constitution, for no law is self-enforcing. With this said, it can be concluded that whoever seeks to apply the Constitution has a valid constitutional interpretation.

There is no infallible way for understanding and interpreting the Constitution, no right answer. Whoever seeks to apply the Constitution may have a valid interpretation of it; however, judges, by their exercise of judicial review, are interpreters of the Supreme Norm and can employ any method of ascertaining the meaning of the Constitution to justify their reasoning in the performance of their functions.

Judges have a system of values (that include morals) and experiences that allows them to understand and interact with their environment, they also have a level of training and institutional thought that assures certain frame of mind and a standard of legal knowledge. Product of their legal training is the knowledge of a specific language, which according to Bourdieu, “combines elements taken directly from the common language and elements foreign to its system. But it bears all the marks of rhetoric of impersonality and neutrality”.<sup>42</sup> The use of this language in the Constitution allows it to incorporate many conflicting elements of social life, product of ideological clashes; into a language that a judge can use in interpretation to give them some amount of coherence.

Carter and Burke describe the elements of judicial reasoning, that is, those things that the judge must harmonize in order to convince of the quality of his reasoning.<sup>43</sup>

- The case facts established in the trial and preserved in the record of the evidence produced at the trial.
- The facts, events and other conditions that we observe in the world, quite apart from the case at hand, which we call social background facts.
- What the rules of law, that is, the official legal texts created by the state, say about cases like this
- Widely shared moral values and principles.

When submitted with a conflict that requires the interpretation of the Constitution, because the case facts and the facts are directed towards this situation, a judge will choose among the legal materials that he has available, that is, the rules of law that includes the Supreme Norm itself, and the interpretation that the parties and the several *amici curiae* provide and using as a base the different values (moral, ideological and others), experiences, legal knowledge, he will use interpretative methods to justify the conclusions he reaches in his proposed solution to the legal problem submitted to his jurisdiction. The use of these methods will vary according to a complex

series of factors, among which we can find the case facts, the formation of the judge, the facts, legal culture, and popular perception.

The purpose of constitutional interpretation is to fill a deficiency in the law by means of extending the signification of the legal text. When a gap in the law is to be filled, but there is not a norm to interpret, then the activity to be made is that of gap-filling, known to civil law scholarship as “integration”. This limitation is best expressed by Sagues<sup>44</sup>: “The integration of the constitutional norm is a legal creative process, destined to cover the “gaps” in the Constitution. It is a mechanism distinct from that of interpretation, because here, there is no norm to interpret” (author’s translation).

## *2. Constitutional gap-filling*

Sagues, in his study of judicial constitutional interpretation approaches constitutional gap-filling and gives a concept on what is a constitutional gap: “...they are only those normative gaps the import “institutional failures, lack of fundamental institutions that impede the functioning of the constitutional order”. Constitutional gap is one that puts the legal-political order of the State “in great commotion””.<sup>45</sup>

This author divides constitutional gap in two types: historical gaps,<sup>46</sup> which are those in which the Supreme Norm does not regulate matters regarding the structure and operation of the State due to circumstances not envisioned by the Framers, and the axiological gaps<sup>47</sup> are those in which there is an existing constitutional norm, but this goes against legal and political values.

In the same fashion as in constitutional interpretation, it is necessary to ask: Who can integrate the Constitution? Is it only a task befitting the amendment procedure? Sagues gives a pragmatic answer: “It is not sensitively possible that the judge stops sentencing or the executive to administrate in the presence of a constitutional gap... it would mean the paralysis of public services or the administration of justice when not the legislative process, until the constituent power is summoned and he decides what were necessary”.<sup>48</sup>

To complement this answer is necessary to remember the constitutional oath contained in Article VI of the Constitution, if it bestows upon all of the organs of government the duty to uphold the Constitution and there is a gap that impedes them to act within the scope of their faculties, then they are capable of filling the gap presented in the Constitution.

Professor Sagues also makes a classification of the sources of constitutional gapfilling and divides them in two: Self-integration,<sup>49</sup> which consists of filling the gap by means of analogy with the Constitution and its principles, and heterointegration, which is the use of “legal principles, starting with those of constitutional law<sup>50</sup> that are above the Constitution, as well as natural law and exemplary foreign law”.<sup>51</sup>

## *3. Constitutional mutation*

Constitutional mutation has been a recurrent topic of study in European constitutional theory since the end 19<sup>th</sup> century. Jellinek defines constitutional mutation as: “that modification of the

Constitution that leaves its text unchanged, without formal amendment that is produced by facts that do not have to be followed by the intention or conscience of such mutation” (author’s translation).<sup>52</sup> While Dau-Lin as “the incongruence that exists between constitutional norms on one hand and the constitutional reality on the other” (author’s translation).<sup>53</sup>

Early positivists like Laband and Jellinek defined the mutation of the Constitution as a problem that arose in the political practice of the Constitution of 1871. In his view, Dau-Lin also perceived it as a problem, but he also helped to define its nature.<sup>54</sup> To me, mutation is a feature of rigidness in constitutions, but it is not necessarily a problem. Only when the mutation is in contradiction of the Constitution, it can be considered as pathology or a problematic.

When trying to explain the endurance of Constitutions, Elkins, Ginsburg and Melton develop a theory of constitutional bargain and renegotiation. They have three facts that help a constitution endure the enforcing and renegotiation processes: inclusion, specificity and flexibility.<sup>55</sup> Their idea of flexibility is similar to mutation, but they are not the same, for the former not only comprises the idea of mutation, but also of resistance, which will be explored later.

When there is a tension between the Supreme Norm and the reality, the mutation arises as a form of liberating such pressures, changing the sense of the Constitution, but rendering it still applicable, otherwise there would be a rupture in the constitutional order and the Supreme Law would not endure, for the continuous unresolved stress would result in a breakdown of its established order.

Mutation must be understood then as a coping mechanism for Constitutions so they can endure stress brought by time, internal and external changes and interactions between the subjects of the Constitution. And so Elkins et al understand it, when they justify the need for flexibility: “Given the existence of exogenous shocks that change the costs and benefits to the parties to a constitutional bargain, constitutions require mechanisms for adjustment over time”.<sup>56</sup>

Regarding the limits of mutation, Da Silva says that the conflict between reality and norm can be resolved: “a) by constitutional amendment, b) by the prevalence of the norm over the fact by a firm judicial decision”.<sup>57</sup> Pedro de Vega takes these notions further:

... Meanwhile the always latent tension between the fact and the norm, it is not presented in terms of a conflict and manifest incompatibility, the constitutional mutations can coexist with the principle of constitutional supremacy, without the latter suffering a significant detriment. The problem of the limits of mutation starts when the tension between the facts and the normativity turns socially, politically and legally into a conflict that endangers the notion of supremacy itself. It is then when it appears as the only possible alternative to, either convert the constitutional practice (mutation) in a norm through amendment, or deny the legal value of the mutation, in the name of existing legality...<sup>58</sup>

#### 4. *Constitutional gapfilling as mutation*

Mutation does not consist of ascertaining the meaning of a Constitution; ideally, it looks to change it to relieve the pressure of an exogenous stress, although there are mutations that can cancel the content of the Supreme Law. Gap-filling implies change in the sense of the Constitution without amending the text, but this does not mean that it is synonym with mutation. The latter is every change (beneficial or detrimental) to the Constitution without amendment, gapfilling looks to adapt the Constitution to external stimuli, so it can be said that mutation is the genre and gap-filling the species.

Gap-filling comes from a stress caused by exogenous conditions, which include the passage of time. This pressure impedes the correct function of the Constitution, and to prevent the collapse of the constitutional order, its meaning is changed (although not its text) to allow it to overcome the obstacle referred before. Both mutation and gap-filling can be done by any organ of government (no matter which branch it belongs to) through norms (statutes or regulations), custom, political convention and constitutional precedent. Gap-filling as a sector of constitutional mutation can be made by using the Constitution or by using external sources to fill the gap, but always done under the frames of legal reasoning.

An equivalent in American constitutional doctrine to constitutional gap-filling as mutation is constitutional construction,<sup>59</sup> already analyzed in the study of the limits of constitutional interpretation. Regarding the need for constitutional construction, Balkin states the following:<sup>60</sup>

We need construction in two situations. The first is when the terms of the Constitution are vague or silent on a question and to apply them we must develop doctrines or pass laws to make its words concrete or fill in gaps. The second is when we need to create laws or build institutions to fulfill constitutional purposes. Both of these practices are the work of living constitutionalism.

It then becomes clear that constitutional construction comprises the concept of gapfilling by means of judicial and legislative action, as shown in the constitutional mutation typology.

##### *5. Constitutional resistance*

The notion of constitutional resistance can be extracted from the teachings of Spanish professor Francisco Tomás y Valiente: a) The resistance of the Constitution can be understood as the adaptability to the political dynamic; b) it is also its capacity of being interpreted in a flexible manner and to change in function of new problems and sensibilities; c) it is also a resistance to amendment, making it unnecessary; d) constitutional resistance must be elastic, it consists of assimilating, without leaving out, the different political expectatives not opposed frontally to its text; e) a Constitution has resistance if it is capable of coupling the norms with the political reality, that is, its capacity to assume mutations.<sup>61</sup>

Resistance, like mutation, is a feature of rigid constitutions and is the capacity a Constitution possesses to adapt to change. It finds itself working as a bridge between constitutional interpretation and mutation, for it can be conceived as an interpretation that expands its content,

or the assimilation of gap-filling that changes its meaning altogether. In short, like mutation, resistance is part of a Constitution's capacity to respond to external pressures.

#### *6. Relationship between constitutional interpretation, resistance and mutation.*

Constitutional interpretation and resistance are similar in substance, because they are forms of a Constitution for coping with the different circumstances that influence in its duration, however they differ in the fact that interpretation can expand the meaning of the Constitution as long as the norm permits it, but the nature of resistance is adaptability to change and though it overlaps in some terrains with interpretation, it can prescind of it and border with gap-filling.

As was said before, resistance is a feature of the rigidity of a Constitution, but interpretation is not, for a flexible Constitution, as any law, can be interpreted.

Regarding the interception of interpretation and resistance, it is worthy to mention a constitutional interpretation Sagues calls mutative interpretation, which is an interpretative process that admits the existence of a mutation.<sup>62</sup> He divides this interpretation in two types: interpretation promotive of the mutation<sup>63</sup> which is one that gives origin to the mutation and interpretation recognizant of the mutation,<sup>64</sup> which consists of the verification and reception of a mutation made in custom and admits it as a turn from the text of the Constitution.

These concepts are not as much as the realm of interpretation, as they are not looking to determine the meaning of the Constitution, but to give way to gap-filling, however, they are not constitutional mutations, but these acts are within the scope of constitutional resistance. , which is an intermediate concept, that fills the gap between interpretation and integration (mutation).

In U.S. case law, an example of mutative interpretation can be found in *Cooper v. Aaron*, written in 1958 by Chief Justice Black on the eve of *Brown v Board of Education*. In explaining the reach of the equal protection clause of the Fourteenth Amendment, the Court makes an interpretation of the Supremacy Clause, and of *Marbury v Madison*:<sup>65</sup>

Article VI of the Constitution makes the Constitution the 'supreme Law of the Land.' In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as 'the fundamental and paramount law of the nation,' declared in the notable case of *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60, that 'It is emphatically the province and duty of the judicial department to say what the law is.' ***This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution***, and that principle has

ever since been Se9c174c29c1b1 respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. ***It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land***, and Art. VI of the Constitution makes it of binding effect on the States 'any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. ***(emphasis added)***

By stating that the constitutional interpretations carried out by them are part of the supreme law of the land, the Supreme Court justifies their potential for mutating the Constitution. This case fits perfectly into the idea of mutative interpretation carried out by Sagues, for this interpretation gives support to the interpretation of the Fourteenth Amendment made in Brown, but recognizes the idea of extending the scope of the Constitution even beyond its original meaning.

Mutation (gap-filling) and resistance both originate from a rigid Constitution, that is, one that makes difficult the amendment process or impedes it. They both react before the problem of a gap that endangers the Constitutional order, however, resistance is also akin to interpretation and the ascertaining and expansion of a Constitution's meaning without presenting a complete change in it. If it weren't like this, resistance would not be distinguishable from mutation, as is the case with constitutional gap-filling.

The concepts of interpretation, resistance and mutation (constitutional gap-filling) are related with the capacity of a Constitution to endure and be applied, although they differ regarding the method they use to do so, for an interpretation expands a meaning, mutation changes it and resistance dwells within both having a nature of its own.

The idea of the flexibility of a Constitution advanced by Elkins, Ginsburg and Melton comprises the concepts of interpretation, resistance and mutation. Flexibility is the capacity of the text of a Constitution to adapt and incorporate external stimuli into its structure, this ranges from expanding its meaning or changing it altogether. Interpretation, resistance and mutation are variations of a Constitution's meaning when responding to external stimulus, be it political, economic, legal, the passage of time, among others imaginable. That is, they are degrees of constitutional flexibility.

## 4 Judicial constitutional design

### *1. Relationship between adjudication and constitutional dynamics*

Having stated the different sides of the judicial function and how the Constitution transforms its contents according to the circumstances and the passage of time, it is now necessary to relate them both, as a prelude of the topics of the unwritten constitution and judicial policymaking as constitutional mutation.

When a judge, acting as a Triadic Dispute Resolutor, applies the Constitution (normative structure) by means of his function he is either interpreting or mutating it (rulemaking), and he does it with all the factors of judicial behavior intervening in this process, as it was shown with the depiction of the interpretative process carried out by the adjudicator.

This means that he possesses a set of values defined by his interaction with society, experiences, training and institutional thought, which will be used to justify the determination of the content of the interpretation of the Constitution or the changes that will be made as mutation by means of judicial policymaking, when the judge integrates his attitudes with legal doctrine.

A prime example of interpretation can be found in *Gibbons v Ogden*, in which Marshall C.J. interpreted the scope of the word commerce in the U.S. Constitution.<sup>66</sup> A curious mutation can be seen in the “separate but equal” doctrine stated in *Plessey v Ferguson*<sup>67</sup> - later overturned by *Brown v Board of Education* among other precedents-, in which the Equal Protection Clause was applied by the Supreme Court to uphold a Louisiana segregation law that mandated separate railroad cars for blacks and whites, stating that equal protection is circumscribed in civil rights, but not social conventions.

This changed the meaning of this clause for the time it was effective. The policymaking process carried out by this decision was consequence of the conflict of the judge’s attitudes and the law, in which the ensuing integration resulted in the idea that separation could foster equality.

Finally, an instance of interpretative mutation can be found in the prison reform cases that took place between 1965 and 1986, in which many state prison systems-starting with Arkansas- were declared unconstitutional on grounds of the Eight Amendment.<sup>68</sup>

This interpretation served as a grant of jurisdiction to courts that allow them to create and implement policy, through the attitudes-doctrine-integration-coordination process stated in previous paragraphs. By providing a justification for policymaking and mutation, this interpretation can be considered mutative.

## *2. Judicial policymaking and judicial doctrine*

A small reprisal of judicial policymaking is useful for the development of this topic:<sup>69</sup>

Policymaking – says Howard E. Dean-is deciding what is to be done by choosing among possible actions, methods or principles for determining and guiding present and future actions or decisions. Courts, especially high appellate courts such as the Supreme Court often make such choices, establishing new rules and principles, and thus are properly called policymakers.

Judicial doctrine can be defined as:<sup>70</sup> “bodies of rules or principles either authoritatively declared or systematically advocated”. Another definition is provided by McNollgast: “We interpret doctrine as being the set of rules and methods to be used to decide a particular class of cases”.<sup>71</sup> The scope of doctrine is also defined:<sup>72</sup>

...The Court has the discretion to make the range of variability in acceptable outcomes narrow or broad. At one extreme, it can tolerate chaos by refusing to hear all appeals on a given issue, thereby implicitly establishing a “doctrine” that any feasible outcome is acceptable. At the other extreme, the Court can specify completely the outcome that ought to emanate from a given category of cases, and tolerate no deviation.

If one makes a contrast between judicial doctrine and policymaking, it is easy to realize that they are synonyms: both involve decision making of present and future cases through methods, principles or general rules.

Another concept of importance is that of *stare decisis*, which is the “principle that precedents are to be followed in the adjudication of cases”.<sup>73</sup> This principle helps to determine the range of judicial policymaking, for lower courts are bound to follow the principles set by the Court in its case law. However, the Supreme Court is not bound to its own precedent, and can act upon its policy preferences. Shapiro has a useful view of *stare decisis*, which is described by Kritzer:<sup>74</sup>

Incrementalism, Shapiro observes, is “a method of decision-making that proceeds by a series of incremental judgements as opposed to a single judgement made on the basis of rational manipulation of all the ideally relevant considerations”... Shapiro argues that incrementalism is a much better description of the process of judicial policy-making that is *stare decisis*, in no small part because of the fundamental flaws of the classical view of *stare decisis*... The core of Shapiro’s analysis is that precedent is best conceived not as an immutable line of binding principles but as reflecting a particular style of incrementalism... Shapiro’s concern here is not so much with who wins and who loses in specific cases but rather with the evolution of legal doctrine that guides the actions of potential future litigants...

This means that policymaking is a dynamic and evolving process, for new circumstances not contemplated by the initial rule or principle can emerge as additions or exceptions to it, or the Supreme Court can elaborate a principle that is fine-tuned by the appellate courts as future cases get to be decided.

### *3. Judicial policymaking as constitutional mutation*

Courts are policymakers: They engage in such activity by means of declaration of rules, principles or methods in the cases that they get to decide, they get to direct the outcome of future cases- by means of integration of attitudes and legal doctrine- ever changing and evolving when circumstances comprised by future cases make it necessary.

Judicial policymaking was distinguished from interpretation by Rubin and Feeley by saying that for the former the text is a source jurisdiction, while for the latter it is a justification of a decision. In constitutional matters, policymaking comprises the areas of constitutional mutation and resistance, that is, policymaking can be made either by a constitutional interpretation that supports it or fosters it (mutative interpretation) or by a change in the constitutional text without amendment (constitutional gapfilling as a type of mutation). Policymaking can ensue by means of an omission, that is, when a norm is effectively not applied, as is the case of the XIII Amendment, which states:<sup>75</sup>

Neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction. (*emphasis added*).

In this case, the text of the Constitution abolishes slavery in general, except for the case of imprisonment; however, this part of the Constitution has seldom- if ever- been applied. In this case, policy was made by mutating the Constitution through omission in its use. Stressing on this, Grey commented that the nature of the role of the Court as constitutional mutator is not entirely jurisdictional; therefore it is outside the realm of the justification of a sentence (constitutional interpretation):<sup>76</sup>

Second, one can ask the jurisprudential question whether as a general matter the defining and enforcing of basic rights without external textual guidance is essentially a judicial task... A rigorously positivist jurisprudence would hold that judicial decision not directed by the articulate command of a determinate external sovereign is not truly adjudication. Rather it is a species of legislation. But this sort of positivist also views the entirely traditional judicial task of common law development through case-by-case decision as a form of legislation. If common law development is an appropriate judicial function, falling within the traditionally accepted judicial role, is not the functionally similar case-by-case development of constitutional norms appropriate as well? Granted that the supremacy of constitutional law over legislation, when contrasted with the formally inferior status of common law, makes a great difference. But the difference is in the hierarchical status of the judicial decision--which turns on a question of *authority*--and not in the intrinsic nature of the task.

The constitutional mutation is brought upon general by means of principles that are systematically declared in a series of cases, that is, one precedent can establish a rule, which is defined in subsequent cases as the passage of time, the political dynamics and other factors put stress upon the constitutional order.

In these cases, when the stress is unavoidable and the interpretation of the Constitution impossible, the Supreme Court, as guardian of the constitutional order, must change it to prevent its systematical failure and keep it functioning. That is, the Court is used as an escape valve of the pressure that accumulates upon the Higher Norm.

Finally, the role of the Supreme Court in determining the constitutional content by means of policymaking can be summarized by Dean:<sup>77</sup>

Clearly the Supreme Court is more than just a legal body: the Justices are also “rulers” sharing in the quintessentially political function of authoritatively allocating values for the American polity. Representing a coordinate branch of the national government, they address their mandates variously to lawyers, litigants, federal and state legislative, executive and judicial officials, and to broader

concerned “publics.” … They do not expound a prolix or rigid legal code, but rather a living Constitution “intended to be adapted to the various crises of human affairs,” as Chief Justice Marshall said in the McCulloch case. And the Justices employ essentially common law judicial techniques: they are inheritors indeed, but developers too- “weavers of the fabric of constitutional law”- as Chief Justice Hughes observed. The nature of the judicial process and the growth of the law are intertwined….

## 5 Conclusion

1. Judges not only interpret the law, but they create it through doctrine and by doing so, they make policy choices, they decide between competing ideologies contained in legal materials and are participants of the political system by being power holders within the scope of their assigned competence.
2. However, judges are also human beings, and can succumb to the pressures of the endeavor they are to carry out by creating masks, that is, legal constructs by which they hide their humanity whenever making a decision.
3. A Constitution, like any law, is subject of application and as such it has flexibility, that is the capacity to adapt to the everchanging circumstances of human social interaction. This capacity is comprised in the following factors: interpretation, mutation and resistance.
4. When the subject matter is the Constitution, the judges- as the other members of the branches can- interpret and mutate it within the scope of their activities, which means that they are constitutional (re)designers. Their interaction helps build the constitutional order of the polity.
5. It was shown that precedents can have varying nature regarding their relation with the Constitution, and that policy implementation through doctrine established in a series of precedents can imply a change in the meaning of the Constitution without an amendment process.
6. The judges design Constitution using their moral values, legal training and policy preferences as a starting point, and then they conciliate these positions with the legal materials available, which can be divergent or convergent with their ideologies and preferences.
7. Whenever the Supreme Norm is interpreted (be it a simple or a mutative one) or mutated, this expansion is incorporated and ends up creating a system, which is the constitutional order. This is consequence of the nature of the Constitution, which must adapt to a series of varying circumstances, this means constant interpretation and when there is a strong stress on this system a mutation ensues.

## Notes

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<sup>1</sup>MARTIN SHAPIRO, COURTS: A COMPARATIVE AND POLITICAL ANALYSIS, 1, (The University of Chicago Press, 1981).

<sup>2</sup> Alec Stone Sweet, Judicialization and Construction of Governance [http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=alec\\_stone\\_sweet](http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=alec_stone_sweet), 148,149

<sup>3</sup> *Id.*

<sup>4</sup> Martin Shapiro, *supra* note 1, at 2.

<sup>5</sup> LEIF H. CARTER & THOMAS F. BURKE, REASON IN LAW, 10, (8<sup>th</sup> ed., Longman, 2010).

<sup>6</sup> Martin Shapiro, Judges As Liars, 17 Harv. J.L. & Pub. Pol'y 155 (1994)

<sup>7</sup> MALCOLM M. FEELEY & EDWARD L. RUBIN, JUDICIAL POLICYMAKING AND THE MODERN STATE, 5, (Cambridge University Press, 2000)

<sup>8</sup> *Id.*

<sup>9</sup> Stone Sweet, *supra* note 2, at 150.

<sup>10</sup> *Id.* at 156.

<sup>11</sup> *Id.* at 152.

<sup>12</sup>Feeley & Rubin, *supra* note 7 at 223.

<sup>13</sup> *Id.* at 219, 226, 229.

<sup>14</sup> DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE, 3,(28<sup>th</sup> printing, Cambridge University Press, 2009).

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 4, 5.

<sup>18</sup> Constitution de la Republique Française, <http://www.assemblee-nationale.fr/english/8ab.asp#IX>

<sup>19</sup> Feeley & Rubin, *supra* note 7 at 226, 227.

<sup>20</sup> KARL LOEWENSTEIN, POLITICAL POWER AND THE GOVERNMENTAL PROCESS, 6, (2nd ed., University of Chicago Press, 1965).

<sup>21</sup> DUNCAN KENNEDY, A CRITIQUE OF ADJUDICATION (FIN DE SIÈCLE), 39, (Harvard University Press, 1997).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 41.

<sup>24</sup> *Id.* at 41.

<sup>25</sup> *Id.* at 99.

<sup>26</sup> *Id.* at 99, 100.

<sup>27</sup> RICHARD POSNER, HOW JUDGES THINK, 67 and 68, (1<sup>st</sup> ed., Harvard University Press, 2010).

<sup>28</sup>JOHN T. NOONAN JR., PERSONS AND MASKS OF THE LAW, 20, (University of California Press, 2002)

<sup>29</sup> *Id.* at 21

<sup>30</sup> *Id.* at 25, 26.

<sup>31</sup> ANTOINE DE SAINT EXUPÉRY, THE LITTLE PRINCE, (Harcourt Inc., 2000).

<sup>32</sup> It appears that Prof. Martin Shapiro was inspired by this obscure passage of the Little Prince. See Martin Shapiro, Judges As Liars, 17 Harv. J.L. & Pub. Pol'y 155 (1994).

<sup>33</sup> Or Hercules Hand in English. This character was construed by taking the name of Dworkin's Judge Hercules, a pinch of Judge Hand's infamous temper and the image of the typical XVIII century judge.

<sup>34</sup> Paul Brest, *Constitutional Interpretation*, in ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION, 464, (Levy, Karst and Mahoney eds., Macmillan Publishing Company, 1986).

<sup>35</sup> WALTER F. MURPHY, CONSTITUTIONAL DEMOCRACY, 463, (John Hopkins University Press, 2007).

<sup>36</sup> The legal foundation of this institution within the United States is *Marbury v Madison* and its most known justification can be found in the 78th number of the *Federalist*.

<sup>37</sup> U.S. CONST. art. VI, § 1, cl. 3.

<sup>38</sup> 5 U.S. (1 Cranch) 137 (1803)

<sup>39</sup> LOUIS FISHER, CONSTITUTIONAL DIALOGUES, 231,232, (Princeton University Press, 1988)

<sup>40</sup> Allan Brewer Carias, *Nuevas reflexiones sobre el papel de los tribunales constitucionales en la consolidación del Estado democrático de derecho: defensa de la Constitución, control del poder y protección de los derechos humanos* [New reflections on the role of the constitutional tribunals in the consolidation of the democratic rule of law: defense of the Constitution, control of power and the protection of human rights], Anuario Latinoamericano de Derecho Constitucional (2007, tome I). <http://www.juridicas.unam.mx/publica/librev/rev/dconstla/cont/20071/pr/pr5.pdf>

<sup>41</sup> U.S. CONST. pmb.

<sup>42</sup> Pierre Bourdieu, The Force of Law: Toward a Sociology of the Juridical Field, 38 Hastings L.J. 805, 820, (1986-1987).

<sup>43</sup> Carter & Burke, *supra* note 5 at 10.

<sup>44</sup> NESTOR PEDRO SAGÜES, LA INTERPRETACIÓN JUDICIAL DE LA CONSTITUCIÓN [Judicial Interpretation of the Constitution], 119, (2nd ed., Lexis Nexis, Buenos Aires, 2006).

<sup>45</sup> Sagües, *supra* note 44, at 119.

<sup>46</sup> *Id.* at 121.

<sup>47</sup> *Id.* at 121.

<sup>48</sup> *Id.* at 126.

<sup>49</sup> *Id.* at 127.

<sup>50</sup> Constitutional case law could be taken as a reference for finding these principles.

<sup>51</sup> Sagües, *supra* note 44, at 128

<sup>52</sup> HSU DAU-LIN, MUTACIÓN DE LA CONSTITUCIÓN [Constitutional Mutation], 29, ( trans. Pablo Lucas Verdu and Cristian Forster, Instituto Vasco de la Administración Pública, Onati, 1998).

<sup>53</sup> *Id.* at 31.

<sup>54</sup> Dau-Lin, *supra* note 76 at 31.

<sup>55</sup> ZACHARY ELKINS, TOM GINSBURG AND JAMES MELTON, THE ENDURANCE OF NATIONAL CONSTITUTIONS, 65, 78, (Cambridge University Press, New York, 2009)

<sup>56</sup> *Id.* at 81.

<sup>57</sup> Jose Alfonso Da Silva, *Mutaciones Constitucionales* [Constitutional Mutations], CUESTIONES CONSTITUCIONALES (Number 1, July-December 1999), <http://www.juridicas.unam.mx/publica/rev/cconst/cont/1/tes/tes1.htm#N31>

<sup>58</sup> PEDRO DE VEGA, LA REFORMA CONSTITUCIONAL Y LA PROBLEMÁTICA DEL PODER CONSTITUYENTE, [Constitutional Amendment and the problem of the Constituent], 215, (6th prtg., Technos, Madrid, 2007).

<sup>59</sup> Not to be confused by the notion advanced by Keith Whittington, who states that construction is the interpretation made by the executive and legislative. See KEITH WHITTINGTON, CONSTITUTIONAL CONSTRUCTION, (Harvard University Press, 2001)

<sup>60</sup> Jack M. Balkin, Framework Originalism and the Living Constitution, 103 Nw. U. L. Rev. 549, 559-60 (2009).

<sup>61</sup> Francisco Tomás y Valiente, *La Resistencia constitucional y los valores* [Constitutional resistance and the values], [http://www.cervantesvirtual.com/servlet/SirveObras/public/01361620824573839199024/cuaderno15/volII/doxa15\\_08.pdf?portal=4](http://www.cervantesvirtual.com/servlet/SirveObras/public/01361620824573839199024/cuaderno15/volII/doxa15_08.pdf?portal=4)

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<sup>62</sup>Sagües, *supra* note 44, at 44.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Cooper v. Aaron, 358 U.S. 1, 4-26, 78 S. Ct. 1401, 1402-14, 3 L. Ed. 2d 5 (1958)

<sup>66</sup> Gibbons v. Ogden, 22 U.S. 1, 213, 6 L. Ed. 23 (1824)

<sup>67</sup> Plessy v. Ferguson, 163 U.S., 16 S. Ct. 1138, 1138, 41 L. Ed. 256 (1896)

<sup>68</sup> Feeley & Rubin, *supra* note 7 at 39

<sup>69</sup>Howard E. Dean, *Judicial Policymaking* in *ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION*, 1043, (Levy, Karst and Mahoney eds., Macmillan Publishing Company, 1986).

<sup>70</sup> Kenneth L. Karst, *Doctrine* in *ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION*, 573, (Levy, Karst and Mahoney eds., Macmillan Publishing Company, 1986).

<sup>71</sup> McNollgast, *Politics and the Courts: A Positive Theory of Judicial Doctrine and the Rule of Law*, 68 S. Cal. L. Rev. 1631, 1639 (1995)

<sup>72</sup> *Id.* at 1631, 1641.

<sup>73</sup> Dennis J. Mahoney, *Stare decisis* in *ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION*, 1725, (Levy, Karst and Mahoney eds., Macmillan Publishing Company, 1986).

<sup>74</sup> Herbert M. Krtizer, *Martin Shapiro: Anticipating the New Institutionalism* in *PIONEERS OF JUDICIAL BEHAVIOR*, 401, 402 (Nancy Maveety ed., University of Michigan Press, 2006).

<sup>75</sup> U.S. CONST. amend. XIII, §1

<sup>76</sup> Thomas C. Grey, *Do We Have an Unwritten Constitution?*, 27 Stan. L. Rev. 703, 714-15 (1975).

<sup>77</sup> Howard E. Dean, *supra* note 70, at 1046.



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DOI: [10.22609/2.1.4](https://doi.org/10.22609/2.1.4).

## A Theory of Humanity: Part 2—Conditions for True Universalism

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### ABSTRACT

The currently used humanity model is chaotic, devoid of logic or coherence. In Part 1 of this two-part paper, we examined human traits of a scientific model in absence of ‘born sinner’ starting point. We demonstrated that the so-called ‘viceroy model’ that is characterized as scientifically sustainable can replace the existing models that are based on fear and scarcity. Part Two of the paper deals with adequate definition of moral campus that conforms to the viceroy model. In this paper, it is shown that the talk of morality or a moral compass is aphenomenal in absence of strict necessary and sufficient conditions. It also follows that natural justice can only be followed after defining the term ‘natural’ with the same scientific rigor as that of the viceroy model. Once these terms are consistently defined, one is well poised to talk about inalienable rights, moral compass, environmental sustainability, and humanity. The immediate consequence of this model is the demonstration that currently used governance models, such as democracy, is inherently implosive and must be replaced with a new model that is in conformance with the scientific definition of ‘natural’. This emerging model is free from inconsistencies and will remain effective as a governance tool that optimizes individual rights and balances with the right of the state as well as a Creator. It is concluded that this model offers the only hope of maximizing individual liberty without compromising universal peace and natural justice. At this point, morality and legality become equivalent to each. The implications of this paper are overwhelming, making all current judicial actions immoral, in essence repudiating the entire Establishment as little more than a mafia entity, bringing back ‘might is right’ mantra, packaged as ‘social progress’. The paper finally shows how a standard that is necessarily and sufficiently universal can become impetus for a true knowledge.

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## 1 Introduction

Plato said, "Strange times are these in which we live when old and young are taught falsehoods. And the one man that dares to tell the truth is called at once a lunatic and fool." Few question the notion that this 'strange times' is now when it comes to politics. However, fewer understand the science behind this 'strange times', even fewer appreciate how this 'strange times' have pervaded all aspects of our civilization, and practically no one sees this as a problem in the science and technology development sector. Many dislike the current system but few see the big picture and the direction that our civilization is moving and none can tell us how to fix the system. The runaway tendency to characterize legal issues as political and policy matters continues to go entirely unchallenged. As a result, not only does political apparatus now routinely promote its policy agenda by criminal means but the legal system itself has been largely corrupted and is now entirely ineffective at dispensing justice.

The core question is, what is the purpose of humanity and what criteria that we can use with moral authority. Consider the following quote:

"I am not bound to win, but I am bound to be true. I am not bound to succeed, but I am bound to live by the light that I have. I must stand with anybody that stands right, and stand with him while he is right, and part with him when he goes wrong."

Abraham Lincoln quotes (American 16th US President (1861-65), who brought about the emancipation of the slaves. 1809-1865)

We have been told that we are constantly making progress. Yet, one may consider the following quote from Late Antiquity and conclude the opposite:

An Arab is no better than a non-Arab, and a non-Arab is no better than an Arab; a red man is no better than a black man and a black man is no better than a red man – except if it is in terms of piety. — Prophet Muhammad, 632

In part 1 of this paper,<sup>1</sup> we elaborated how the human family becomes unique under the auspices of conscious and conscientious participation as a viceroy of the creator. This concept that was in existence in every civilization that is known today was stifled by proponents of the Church of Rome, long before Qur'an was revealed during 23 years, spanning over sixth and seventh centuries. Notwithstanding the 1000 years of the Islamic golden era that allowed true scientific cognition to flourish at least in the areas of academic aspects of jurisprudence as well as science and engineering, Europe as such has been influenced only by dogmatic cognition. Even in the 'secular' setting, the modern age has been characterized as being both a time of "technological disaster" (as per Nobel Laureate Chemist, Robert Curl), and of "scientific miracles" (as the most predominant theme of modern education). The situation is worse in case of politics and governance. We have assertions of democracy being 'restored' by the military

(Egypt) and peace being exported through military (USA). In the international arena, numerous cases of warfare are being played out like video games in control of a senseless teenager, whose sole purpose is to gain notoriety through insanity. Consider the prolonged wars in Afghanistan, where the shadowy 'Islamic State of Iraq and Syria' is produced as an excuse to prolong military presence. This war has cost nearly \$1 trillion to date, and caused the deaths of 3,518 US and coalition troops, including 158 Canadians who blundered into a war none of them understood. No one has the courage to end this pointless war. Meanwhile, hundreds of thousands of Afghans have been killed. No one at the Democratic or Republican Conventions had time to think about the endless war in forgotten Afghanistan.

These cases illustrate a greater problem in today's culture: the establishment has done absolutely nothing to convince that its various policies are moral, sound, or even legal. At the same time - even if we ignore some of the more colourful, conspiracy theories which seem more like a Psyop of discredit genuine complaints about government excesses - the establishment's various policy positions have done a great deal to convince us that the political and security apparatus has completely abandoned the rule of law and will do anything to advance the establishment agenda. To understand just how unaccountable, unilateral, and illegitimate the machinery of state has become, one need only look at: 1. events in Iraq, Libya, Egypt, Syria, Afghanistan, and Africa; 2. the establishment's Iran; 3. events in Palestine; 4. the complete domination of corporate money both in the policy making machine and in elections; 5. the failure to tackle corruption in accordance with existing laws - both domestic and international; 6. the bureaucratic branch of government's now almost complete lack of responsiveness to public complaints; 7. the utter break down of our legal systems as a mechanism for delivering justice and certainty; and 8. overwhelming support for the now dominant ideology of corporatism. Central to this issue is the arbitrary dehumanization of certain groups of humans. The activist emergency surgeon Mads Gilbert summarized this dilemma in the context of Palestine, "In 1938, the Nazis called the Jews "Untermenschen," subhuman. Today, Palestinians in the West Bank, in Gaza, in the Diaspora are treated as Untermensch, as subhumans who can be bombed, killed, slaughtered by their thousands, without any of those in power reacting."

In Part 1 of this two-part paper, we have demonstrated that the absence of standard is linked to the absence of a confirmed communication from the Creator as to the role humans must play. In this paper, we show that role can be carried out only with a logical and universal standard against which every human action must be tallied. At the time that the original paper was being drafted, authors did not know the kind of irony this part of the paper will create, but it turned out the world is at the cusp of witnessing the leader of morality having to select between two most untrustworthy candidates that are nominated from the two principal parties of the United States.<sup>2</sup> The fact that Donald Trump is being called 'the emperor with no clothes' and that the Clintons are the ones that advised Trump to run for presidency in a contest that has no parallel in history<sup>3</sup> in terms of lack of public trust makes the paper both necessary and timely.

## 2 The Need for a Logical Standard

The previous paper shows that in the face of our current situation, the most important requirement of global morality is a logical and universal standard. The most serious, most important, most significant, most truly acid test of such a standard is that it accounts for everything necessary and sufficient to explain the phenomenon — its origin, its path and its end-point — thereby rendering it positively useful to human society. In science, such criterion was used by Khan.<sup>4</sup> He argued that the same criterion was used in previous civilizations to distinguish between real and artificial. This criterion uses the notion that a true criterion has to be continuous as time approaches infinity. This is equivalent to the truth criterion of Plato as well as Averroës that floated the notion that truth cannot be transient. This definition avoids scrutiny of the intangible source of individual action (namely, intention) as long as the time infinity condition is met. However, Zatzman et al.<sup>5</sup> pointed out that the endpoint at time  $t = \infty$  can be a criterion, but it will not disclose the pathway unless a continuous time function is introduced. Such continuity cannot be assured in absence of both major and minor premises to be true, as in being insensitive to time. It is important to note that this condition is exact and cannot be replaced with premises that are ‘approaching’ the truth.

In this paper, we will cite a number of examples from social science in order to demonstrate the need for a logical standard.

Consider the following syllogism:

All Americans speak French [major premise]  
President Francois Hollande is an American [minor premise]  
Therefore, President Hollande speaks French [conclusion-deduction]

If, in either the major or minor premise, the information relayed above is derived from a scenario of what is merely probable (as distinct from what is actually known), the conclusion, which happens to be correct (in its face) in this particular case, would be not only acceptable as something independently knowable, but reinforced as something also statistically likely. This, then finesses determining the truth or falsehood of any of the premises, ... and, eventually, someone is bound to “reason backwards” to deduce the statistical likelihood of the premises from the conclusion! Indeed, this latter version, in which eventually all the premises are falsified as a result of starting out with a false assumption asserted as a conclusion, is exactly what has been identified and labeled elsewhere as the aphenomenal model. This model cannot be rectified unless one replaces both major and minor premises with something that is true. This truth, eventually, has to go back to absolute truth — something that cannot be verified through tangible experience.

Consider another syllogism (the concept of “virtue” intended here is “that which holds positive

universally at all times”, not just for some individual or arbitrary subset of individual members of humanity or for a certain time interval):

All virtues are desirable.  
Speaking the truth is a  
virtue.  
Therefore, speaking the  
truth is desirable.

Even before it is uttered, a number of difficulties have already been built into this apparently non-controversial syllogism. When it is said that, “all virtues are desirable”, there is no mention of a time factor (pathway) or intention (source of a virtue). For instance, speaking out against an act of aggression is a virtue, but is it desirable? A simple analysis would indicate that unless the time is increased to infinity (meaning something that is desirable in the long-run), practically all virtues are undesirable. For instance, even giving out in charity requires austerity in the short- term, defending a nation requires self sacrifice – an extremely undesirable phenomenon in the short-term. In the same way, if giving charity is a virtue, would that make giving away stolen goods a charity? Robin Hood may be an acceptable hero in the post-Renaissance culture, but is such a categorization logically grounded?

Giving away stolen goods can be a virtue only if the history (time function) is obliterated. This would make the process inherently aphenomenal. The third component is in the source of an act. For instance, is giving away with the intention of recovering something in the future a virtue? Is helping an oppressor, who would use the information given to increase oppression a virtue? Can someone give out state secret to the enemy just because it is the truth? How about speaking the truth when it brings in animosity? For instance, if a person has spoken ill of another person, is it a virtue to convey that message to that person even if the allegations are true.?

This logic shows the need for highlighting both the source (intention) and the pathway (time function going back to the origin) of an action in order to qualify it as a virtue. The scientifically correct reworking of this syllogism should be:

All “virtues” are desirable for all humans [major premise]; Speaking “the truth” is a virtue at all times [minor premise]; Therefore, speaking “the truth” is desirable at all times.

What is mentioned as the ‘major premise’ can stand for generic – the essence of universality – whereas the minor premise relates to specific. However, the conclusion is true universally and at all times under two conditions:

1. The definition of 'virtue' is based on fundamentally correct premise that includes intention as well as pathway;
2. The definition of 'the truth' is based on fundamentally correct premise.

The logic goes back to even more fundamental premise that must provide one with the definition of true virtue and then qualify the truth. It essentially shows that there has to be a duality of premises that can form an axis, which can then be used to define universal laws. The duality here is similar to the yin yang duality that has been shown in science as ubiquitous, first starting with creator and creation. We will see in latter section, this duality in cognition sense refers to law maker and law giver.

The immediate outcome of this analysis is the complete disclosure of the source, pathway (time function), and final outcome (time  $t$  approaching  $\infty$ ) of an idea, prior to initiating the action. This analysis can and does restore to its proper place the rational principle underlying the comparing of natural thought to spurious or aphenomenal ones.

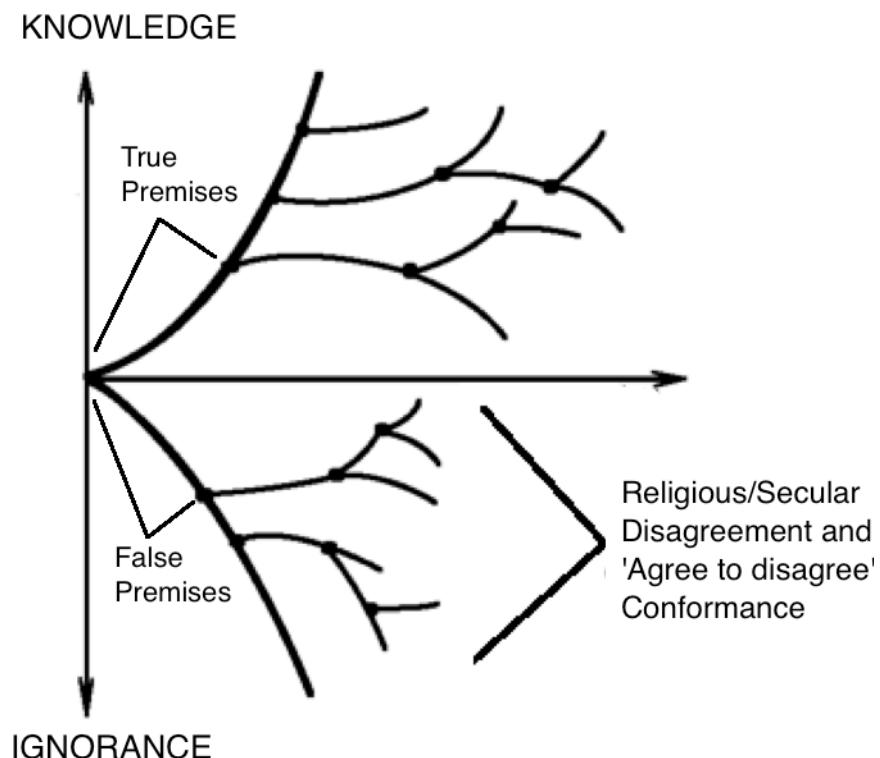


Figure 1. All arguments based on false premises end up increasing ignorance

Figure 1 shows the two contrasting pathways, one based on fundamentally true major and minor premises and the other on false premises. It can explain why none of the conformists' outcomes can be trusted when conformity is based on false premises. In fact, as Dr. Martin Luther King, Jr. famously pointed out, "We should never forget that everything Adolf Hitler did in Germany was "legal" and everything the Hungarian freedom fighters did in Hungary was "illegal." It was "illegal" to aid and comfort a Jew in Hitler's Germany," unless one starts off on a set of correct premises, there is no way to correct the degradation. The aphenomenal process (downward curves on Figure 1) is not amenable to self-correction. If the source (first premises) were to be ignored, there would be no difference between regimes such as political Islam and Communism, both of which apply very similar political and socio-economical processes.<sup>6</sup> With the current analysis, both source and pathway are taken into account, blocking the way to such premature and counterfeit declarations. This is not to say there may not be ways to improve upon the best uses humans can make of whatever has already been given in the natural realm. If, however, any such improvements are to be sustainable — the only test of truth in nature being that which eventuates over the passage of time — they cannot simply substitute something "identical", completely discounting or ignoring the source(s) and pathway(s) of the phenomenal original. In this, the validity of any conclusion would depend on the intention. If the intention is not phenomenal (real or consistent with the phenomenal first premise), every conclusion will be aphenomenal. Here, there is only one phenomenal intention, which coincides with the true first premise. This aspect will be clarified in latter sections.

### 3 The Invocation of God

What are the origins of the invocation of God in discussions of truth? The notion of God as the maker of standard of truth goes back to most ancient of civilizations, ranging from ancient Chinese, Indian, to Greek.<sup>7</sup> However, much of this information has been lost, and if it was not for the Muslim scholars that took great pain in translating ancient works into Arabic, we wouldn't have access to the work of many of the ancient scholars. In particular, the work of ancient Greeks drew particular interest in modern Europe. Still, much of this knowledge was lost in the process of dogmatization that twisted all information to fit the dogmatic narration of humanity. This explains why all European theories, including those of the self-proclaimed 'secular' origin, are in reality some regurgitated form of the 'original sin' model of humanity. One has to read carefully to discover instances in ancient Greek civilization where reference is made to God as the Creator as well as the absolute truth. In fact, a narration of Plato that is widely accepted as the 'idealist view' stipulates that God is the only entity that is not non-fleeting, thereby, being the Truth or the Real. This is in line with the oriental concept that 'truth

unravels itself".<sup>8</sup>

Every civilization recounted in history other than post-Roman Catholic church's Eurocentric era had a clear connection of God with what constitutes truth. Plato understood it as synonymous with real that doesn't change with time (the physical world being fleeting or a function of time is not 'real'). Aristotle understood it as what really 'is'. In ancient India, Truth was defined as "unchangeable", "that which has no distortion", "that which is beyond distinctions of time, space, and person", "that which pervades the universe in all its constancy". These, along with the national motto of India, "Satyameva jayate" (Truth alone wins), as well as "Satyam muktaye" (Truth liberates), are entirely consistent with what the Qur'an defined Truth as one of the 99 traits of the Creator. Other traits matching 'unchangeable', 'no distortion', beyond time, space, and person', etc. This was so well known in Islamic golden era that each scholar (e.g., Avicenna, Averroes, Alhazen) started off re-stating what constitutes the truth. The first distortion was introduced by Saint Augustine, who was the first one to break down the most important feature of truth – uniqueness. He wrote in his "Trinity", that "God is truth for he, too, has a true [real] soul who has not a great soul; since the essence of body and soul is not the essence of the truth [reality] itself; as is the Trinity, one God, alone, great, true, truthful, the truth..." Next came Thomas Aquinas. He had access to Avicenna, Averroes, as well as Aristotle (through Muslim scholars' translations). He wrote:

"A natural thing, being placed between two intellects, is called true insofar as it conforms to either. It is said to be true with respect to its conformity with the divine intellect insofar as it fulfills the end to which it was ordained by the divine intellect... With respect to its conformity with a human intellect, a thing is said to be true insofar as it is such as to cause a true estimate about itself."<sup>9</sup>

All of a sudden, truth became subject to human intellect. This would be the beginning of today's illogical definition of truth. *Ever since, God has been disconnected from logical discourse, making the truth criterion the first casualty.* Consider the nature of following theories and hypotheses.

1. Correspondence theory (stresses a relationship between thoughts or statements on one hand, and things or objects on the other).
2. Coherence theory (truth is primarily a property of whole systems of propositions, and can be ascribed to individual propositions only according to their coherence with the whole, i.e., Authority).
3. Constructivist theory (truth is constructed by social processes, is historically and culturally specific, and that it is in part shaped through the power struggles within a community.)
4. Consensus theory (truth is whatever is agreed upon, or in some versions, might come to be

agreed upon, by some specified group. Such a group might include all human beings, or a subset thereof consisting of more than one person.)

5. Pragmatic theory (truth is verified and confirmed by the results of putting one's concepts into practice.)
6. Minimalist theories (truth does not denote a real property of sentences or propositions.)
7. Redundancy and related theories (truth is a redundant concept; that is, it is merely a word that is traditionally used in conversation or writing, generally for emphasis, but not a word that actually equates to anything in reality.)
8. Pluralist theories (there is a particular property the having of which makes a belief or proposition true. Pluralist theories of truth assert that there may be more than one property that makes propositions true: ethical propositions might be true by virtue of coherence. Propositions about the physical world might be true by corresponding to the objects and properties they are about.)

In summary, what we have is a comical assembly of research questions ranging from Harvard College's "How many angels can dance on a pin head?" to the 18th century classic "If a tree falls in a forest and no one is around to hear it, does it make a sound?" These have created a world in which systematic falsehoods have become the truth while the truth can be dismissed as 'conspiracy theory' whenever it happens to gore some powerful individuals' oxen. We have graduated from Dogma only to fall for a conception multiple-history of the same physical point

— otherwise known as quantum theory. In the words of Niels Bohr (1885-1962), "The opposite of a correct statement is a false statement. The opposite of a profound truth may well be another profound truth". The opposite to light is a falsehood but the opposite to falsehood is not necessarily the truth. Considering that there are an infinite number of falsehoods contending with each absolute truth, it is almost miraculous if one finds the truth by countering falsehood alone. Bohr was wrong in using the simplest of logic. All these 'intellectual' talks assume that the probability of having any phenomenon take place (including such absurd possibilities as multiple history, ubiquitous existence of same matter, having absolute vacuum or infinite mass, infinite temperature, infinite growth rate) is finite and non-zero but having a creator that is external to creation (Qu'ran 112:2) is zero.

### ***Why is God required to involve absolute truth?: Towards a Model of Sound Logical Cognition.***

Albeit claims of secularism, today's society continues to invoke God, either in its proper name, God, or in its secular alternative 'Nature'. In addition, in many instances, philosophers have invoked themselves to the rank of law maker<sup>10</sup>. The most infamous invocation of God is in the US currency that says 'In God we trust' (Picture 1). This invocation has no meaning unless that

'god' is qualified with evidence. For instance, the question to be answered is who is that God? And What does trust in that entity mean? Let us consider the syllogism, implied in this phrase.

There is God [major premise];  
We have trust in that God [minor premise];  
Therefore, we do the right thing.

The above syllogism is the essence of the faith-based cognition process that has no functional meaning.<sup>11</sup> Had the major premise meant God – the creator, trusting in God wouldn't have an action item unless it was a command of God to trust Him for whatever reason. Trusting in God does not create a certain behaviour or accountability. In reality, it indemnifies a person from being accountable. In addition, doing the 'right' thing also becomes arbitrary, in absence of any communication from God. However, this logic works 'perfectly', if the alleged god is actually Money – the source of worldly power in the Eurocentric culture. As a result of this model, anything can be justified as long as there is enough money to pay for the required propaganda and spinning. This Money god is more than symbolic. Money represents the ultimate of the focus on tangibles or the doctrine of 'Might is right'. Money as a power construct paves the road to the control of access to true information in order to control the past. In the words of Nobel laureate economist, Joseph Stiglitz, "Those with power used that power to strengthen their economic and political positions, or at the very least to maintain them. They also attempted to shape thinking, to make acceptable differences in income that would otherwise be odious."

The lust for control, sex, and money has replaced the original Trinity. All we have is falsehood after falsehood so the first premises are never questioned, be it in science, laws or supposed 'moral actions', or individual or corporate intentions. The non-justifiability of moral actions that resulted from a disconnection between God and God's commands is a "History is written by the victor" model to morality. This principle become the governing principle of our knowledge that must seek guidance from history. A corrupt history is the essence of misguidance and gateway to ignorance. Each falsehood has enormous ripple effects and cannot be corrected without addressing the source, which is never touched in modern day cognition. Contrary to some beliefs, we have become progressively more dogmatic in our cognition, arriving eventually at the HSSA degradation detectable universally throughout every pore of contemporary society. At no time in known history was it actually recognized that history is not immutable. Both in science (quantum theories of the origin of universe) and moral philosophy now openly accept the notion of multiple histories as fact. Today, if someone does not like the past, all he needs to do is re-write it and spend some money selling it as a fact. Whereas previously, someone actually had to disprove the factual errors of history, Dogma has erased this by invoking the Authority of God. The invocation of God is most certainly not the problem; rather, it is the fact that such actions are disconnected to a single source of Truth (God), and now, Truth is changed by the will of the victor. Nowadays, the dispute is in what constitutes 'truth'. After the rise of pragmatism as the new dogma, 'truth' has become anything

that can be ‘believed in’. The newer version of pragmatism adds ‘scientific’ flavor to the same nonsense and makes it more difficult to counter with logical discourse. Such a collapse of science has profound implications going forward.

This conflation of the Money god and creator God is not new and arguably Money was the reason Roman Catholic Church gained legitimacy of ‘state religion’ from the Roman Empire. Today, this conflation continues. Only recently, the ‘in God we trust’ symbolism on US currency

was challenged in the United States Supreme Court.<sup>12</sup> The plaintiff lawyer wrote, “The vast majority of nations manage to function without religious verbiage on their money.” Absent in this narration is the acknowledgement that there is a religion that has a distinctly different and wholly logical first premise, that is: There is no *Ilah* (someone worthy of being obsessed with, deity) but Allah, changing the center for any approach of cognition. This is followed by the minor premise: Muhammad is Allah’s messenger. This set of premises immediately recognizes the existence of the Qur'an, the communication from the Creator that was revealed on prophet Muhammad. If these premises are true, he would be the most educated person ever and a role model for the rest of the humanity, being a result of cognition that allows for singular, and existentially justifiable truth.



Picture 1. Unless it involves the Money god, this invocation is meaningless.

#### 4 What About the Derivation of Absolute Truth?

For a criterion to be universal and time-honored, it must fulfill two requirements: 1) it must conform to natural traits; 2) it must have authority from an external entity that is independent of time and space. Even though scientists and philosophers have invoked God or Nature implicitly, few in modern era have attempted to understand the traits of either nature or God. The vast majority of them conflated God with the Natural and traits of God with the traits of nature. Before we can proceed, this understanding of nature and God must be clear. Islam<sup>13</sup> described the characteristic features of Nature as presented in Table 1. It also lists the nature of artificial version of the natural products. It is important to note that the left hand side

statements are true – not in the tangible sense of being “verifiable”, but because there is no counter-example of those statements.

Table 1. Typical features of natural processes as compared to the claims of artificial processes

<b>Feature no.</b>	<b>Feature of natural</b>	<b>Feature of artificial</b>
1	Complex	Simple
2	Chaotic	Ordered
3	Unpredictable	Predictable
4	Unique (every component is different), <i>i.e.</i> , forms may appear similar or even “self- similar”, but their contents alter with passage of time	Normal
5	Productive	Reproductive
6	Non-symmetric, <i>i.e.</i> , forms may appear similar or even “self-similar”, but their contents alter with passage of time	Symmetric
7	Non-uniform, <i>i.e.</i> , forms may appear similar or even “self-similar”, but their contents alter with passage of time	Uniform
8	Heterogeneous, diverse, <i>i.e.</i> , forms may appear similar or even “self- similar”, but their contents alter with passage of time	Homogeneous
9	Internal	External
10	Anisotropic	Isotropic
11	Bottom-up	Top-down
12	Multifunctional	Unifunctional
13	Dynamic	Static
14	Irreversible	Reversible
15	Open system	Closed system

16	True	Artificial
17	Self healing	Self destructive
18	Nonlinear	Linear
19	Multi-dimensional	Uni-dimentional
20	Zero degree of freedom*	Finite degree of freedom
21	Non-trainable	Trainable
22	Continuous function of space, without boundary	Discrete
23	Intangible	Tangible
24	Open	Closed
25	Flexible	Rigid
26	Continuous function of time	Discrete function of time
27	Balanced	Inherently unstable

\*With the exception of humans that have freedom of intention.<sup>14</sup>

The left hand side of Table 1 shows the characteristic features of Nature. These are true features and are not based on perception. Each is true insofar as no example of the opposite has been sustained. It is important to note that the following table describes everything in existence as part of universal order and applies to everything internal, including time, and human thought material.

At the same time, all the properties stated on the right-hand side are aphenomenal, they are only true for a time period approaching zero, resulting in being “verifiable” only when the standard itself is fabricated. In other words, every statement on the right-hand side only refers to something that does not exist. For instance, honey molecules are considered to be extremely complex. They are complex because they have components that are not present in other products, such as sugar, which is identified as made up of “simple” molecules. Why are sugar molecules simple? Because, by definition, they are made of the known structures of carbon and hydrogen.

A further review of Table 1 now will indicate how every item on the right-hand side is actually a matter of definition and a false premise. If one considers the features of artificial products in Table 1 with those of Table 2, it becomes clear that any science that would “prove” the features (based on a false premise) in Table 1 is inherently spurious. However, the science of tangibles does exactly that and discards all natural processes as “pseudoscience”, “conspiracy theory”, etc.

Table 2. True difference between phenomenal and aphenomenal processes

Phenomenal	Aphenomenal
Progressive/youth measured by the rate of change Non-progressive/ resists change	Conservative/youth measured by departure from natural state
Unlimited adaptability and flexibility	Zero-adaptability and inflexible
Increasingly self evident with time	Increasingly difficult to cover up aphenomenal source
100% efficient	Efficiency approaches zero as processing is increased
Can never be proven to be unsustainable	Unsustainability unravels itself with time

The case in point can be derived from any theories or “laws” advanced by Bernoulli, Newton (regarding gravity, calculus, motion, viscosity), Dalton, Boyle, Charles, Lavoisier, Kelvin, Poiseuille, Gibbs, Helmholtz, Planck and others who served as the pioneers of modern science. Each of their theories and laws had in common the first assumption that would not exist in nature, either in content (tangible) or in process (intangible). Of course, all these ‘laws’ are derived from Newtonian mechanics – something that has also fueled every theory of social science.

At this point, it is appropriate to familiarize the readership of Table 3 that lists the fundamental features of the external entity. The existence of an external entity is necessary condition in order to eliminate the notion of void that had been inherited from Atomism philosophy and was carried forward by first Thomas Aquinas and then by subsequent scientists, without exception<sup>15</sup>.

Table 3. Features of external entity (from Islam, 2014)

Feature no.	Feature
1	Absolutely external (to everything else)
2	All encompassing

3	No beginning
4	No end
5	Constant (independent of everything else)
6	Uniform
7	Alive
8	Infinity
9	Absolutely True
10	Continuous
11	All pervasive in space
12	All pervasive in time
13	Infinite degree of freedom
14	Unique
15	Open system
16	Dissimilar to everything else
17	Absolute Time that control time that controls mass
18	Absolute mass (pure light)

This external entity was first recognized as God (from the ancient Greek philosophers to Avicenna and Averroes of the Islamic golden era), then conflated as plenum and aether<sup>16</sup>. While the existence of such entities has been denied and sometime ‘proven’ to be non-existent, the traits of this external entity have been included in all forms of ‘fundamental’ particles, ranging from photon to the Higgs boson. In addition, such features have also been invoked in galactic models in the form of various entities, ranging from “dark matter”, “black hole” to “absolute void”. Newton introduced this as ‘external’ force and defined it as the originator of differential motion. The original Averroes concept, as supported by the Qur'an was that such originator of motion is the Creator, whose traits are all different from the traits of creation.

## 5 Example: An Absolute Set of Fundamental Premises

Nearly a millennium ago, long before the Renaissance reached Europe, Averroes (1126-1198 AD, known as Ibn Rushd outside of the western world) pointed out, that Aristotelian logic of the excluded middle cannot lead to increasing knowledge unless the first premise is true. In

another words, the logic can be used only to differentiate between true and false, as long as there is a criterion that discerns the truth from falsehood. The difficulty, all the way to the present modern

age, has been the inability to propose a criterion that is time-honored.<sup>17</sup> For Averröes, the fundamental premise was that the Qur'an represented the absolute truth. It was not a theological sermon or a philosophical discourse, it was purely rationalistic. Inspired by the Qur'an that cites the root word *ilm* (meaning "science") more than 700 times (the second most used word – second only to Allah – that is cited over 2500 times (2598 to be exact) in the Qur'an) is the only external standard there is. It is a fact that the Qur'an is the only available communication with the creator that remains intact since inception over 1400 years ago.

This Qur'an itself outlines the major and minor premises that are absolute, constant, and external to human subjectivity. It invokes prophet Muhammad as the communicator and further shows how to cognize to make the process of knowledge gathering complete. The first word revealed in the Qur'an is (96:1) is *iqra*<sup>18</sup> (meaning 'deduce'). The word 'deduction' has the Latin root of *deductio* that means 'leading away', 'drawing out', similar to the latin word, *educere* – the root word of Education that means process of "bringing forth" or "leading out" one's inherent qualities and unique traits necessary and sufficient for increasing one's knowledge. The Qur'an also outlines in clearest terms the purpose of human worldly life. However, starting off with the deductive cognition, one can discover the rest as long as a conscious and conscientious effort is made.

Let us review the major fundamental premise stated in the Qur'an, along with minor fundamental premise and possible outcome:

- There is no *ilah* except Allah [major premise]
- Muhammad is Allah's messenger [minor premise]
- Therefore, emulating the prophet Muhammad is the key to long-term success

Logically, it flows that in order to emulate the life of the prophet, one would need great deal of details of his life. It turns out that the most important work of historical reconstruction of the legacy bequeathed Humanity by Prophet Muhammad was accomplished by Muhammad Bukhārī (810-870), the first person to have compiled a complete treatise of the Prophet's biography. Bukhārī tracked down and verified over 3000 of sayings and traditions of the Prophet, cited over 7000 times (including repeats). As a point of reference, the Qur'an is the only book that remains intact in its original content for over 1400 years. This book is claimed to be the Creator's word, related verbatim by Prophet Muhammad, who didn't know how to read to write. Following that is the book of Hadith or the sayings of Prophet Muhammad. The word Hadith refers to

1. Description of Prophet Muhammad's actions;
2. His verbal statements;

3. Actions of others that he condoned or didn't correct despite knowing about it.

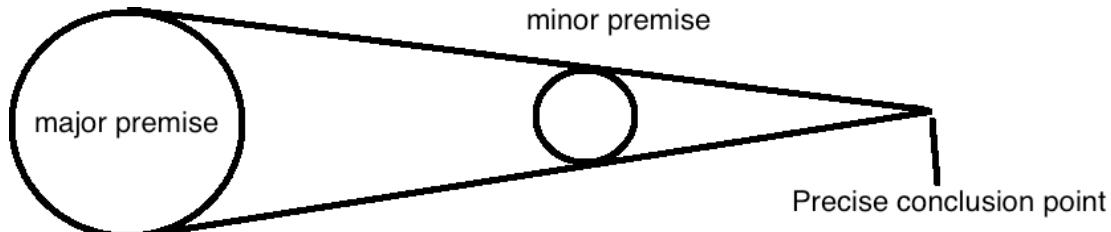


Figure 2. With true major and minor premises, the conclusion will always be phenomenal.

Where do the premises listed above promote existential objective truth, a minor premise, and promotion of long-term cognition? Indeed, the Qur'an, which assumed as true, clearly proposes external truth (Qur'an 112:2-4), and promotes long-term consequentialism (in reference to the post-death 'hereafter;), and it is universal (as in until day of judgement).

Natural deductive cognition becomes aphenomenal if one of the following situations arise<sup>19</sup> (Islam et al., 2016). Islam<sup>20</sup> pointed out that in case a third premise that contradicts with one or both of the fundamental premises is invoked, the cognition axis is no longer a deductive tool, as it would be an inherent hyperbole. In Arabic, this would stand for '*dhawallin*' – a word reserved in prophet's time to describe people that believed in Trinity. Figure 3 shows how such introduction of a third point makes all conclusions inherently aphenomenal, even though the major or minor premise is true. The best-case scenario for the third-point cognition is when the third point is aligned with major and minor premises. It is clear that the introduction of a third premise should be avoided because it adds nothing to the robustness of the cognition axis.

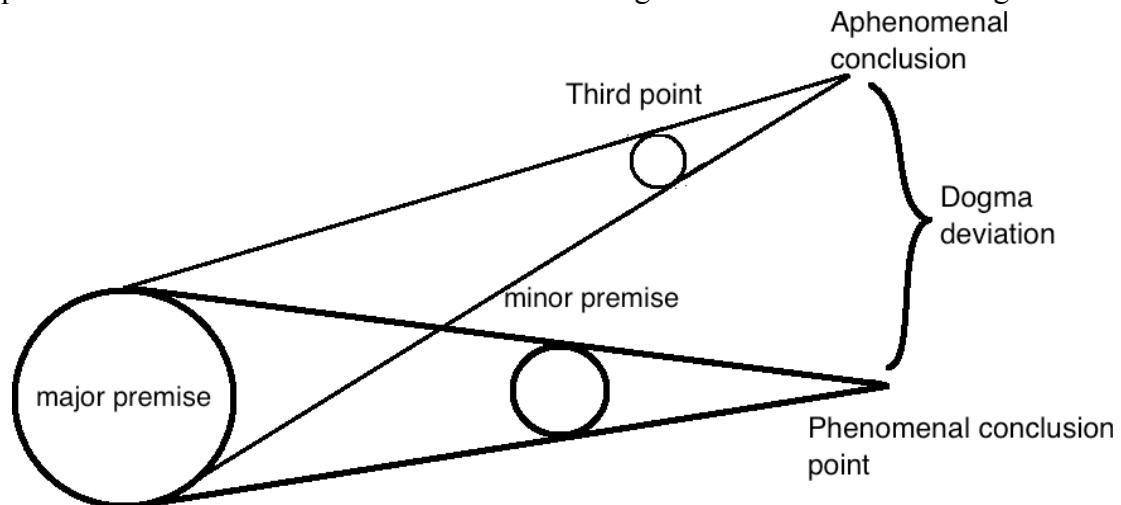


Figure 3. The introduction of a third point creates inherently dogmatic conclusion that is aphenomenal, even when one of the premises might be true.

Equally flawed cognition arises when there is only a single premise. For instance, Atheism, Capitalism, and Communism all have just one premise, making the cognition process equivalent to cognitive schizophrenia.<sup>21</sup> In theological terms, this is the effect Qura'nists (those who reject the authority of Hadiths) use.<sup>22</sup> They can pick up any verse of the Quran and extrapolate it based

on another premise that is their invention (befitting their desired conclusions). This is the case that was discussed in the Quran as an example of *Maghdboub* (literally meaning the cursed ones). In brief, it means, such cognition process allows for anyone to be the transmitter of knowledge (and ultimately causing everyone to become the transmitter), while in reality it is only ignorance and arrogance that are gained by this process.

In absence of two true points of cognition, the cognition becomes schizophrenic with numerous possibilities. This is the natural progression of dogma culture. Today, the essence of Atheism is, everyone is correct and as long as the self cognition matches the desire, a person is entitled to following any cognition path.

## 6 Sufficiency of the Absolute Premises

It is important to investigate if the above set of premises are indeed sufficient. Two questions arise, “how do we make sure everyone is hardwired to cognize with this logic”? and “What guarantees that a person doesn’t fall in the dogmatic deviation phase?”

In Part 1, we have explained the nature of the Caliphate model of humanity. Every human is created in perfect form (Qur'an 95:4). Every human is also inherently duty-bound being Allah's viceroy by nature (2:30). It might not be obvious but Qur'an reminds people that they should not forget they were all infants with no memory of infancy, yet they accept the fact that they were infants and they should also accept what is being told by Allah about their nature and their covenant with Allah (Qur'an 56:62). For them Qur'an is made easy (54:17) and a guidance for those that seek out consciously (Qur'an 2:2), use *aql* (40:67), and Allah doesn't misguide anyone other than *fassiq* (transgressor) - those that break Allah's covenant and create *Fassad* (mischief) (Qur'an 2:26).

Everyone is born Moumin, They are born with all 99 expressed traits of God, the first quality being empathy (*rahma* – via the root word is *Rahm*). This is entirely in conformance with the viceroy status. A human keeps in contact with the Monarch ('*salat*' in Arabic and *yoga* in Sankscrit both mean “communication”) and manages the finances with utmost care (generosity and charity is fundamental trait that is mandated)<sup>23</sup> and acts the same manner the Monarch would have acted in case the viceroy were not there. So, how does one act like the Monarch? He follows His traits. That is when the first revealed verse of Qur'an becomes handy. It says,

“*iqra* (deduce) in the *ithm* (natural trait) of Allah” (Qur'an 96:1). How is that trait embedded? The word ‘*Deen*’ in Arabic and *Dharma* in Sanskrit both mean ‘natural traits’ and not religion as commonly translated. In fact, the word religion and ‘*Deen*’ are opposite of the cognition spectrum. It is also logical that a good Monarch would prepare his viceroy well and give him enough provision. Most importantly, for a viceroy to be held accountable, a viceroy must have certain freedom. This freedom happens to be mentioned in the first Hadith of the book of Bukhārī that states that people are judged for their intentions. Islam gives the freedom of intention, whereas everything else (including provision) being part of the universal order for which he has no accountability. The role of intention is central to the human cognition and anything else that goes with the responsibility of the viceroy. This ownership of intention makes him unique as no other entity other than the Creator has any freedom whatsoever. Of course, the ultimate of all freedom belong to God, but humans are given freedom of their intention. In addition to being the absolute owner of his intention, each human being is equipped with 99 good traits that are similar to Creator’s, albeit at minuscule level.

Let's review some of the traits:

1. Ar-Rahman (literally means ‘a womb’ that extends to infinity in space). Humans are, therefore, born with *rahma*, the simplest translation is 'empathy' for everyone and everything;
2. Ar-Raheem (literally means ‘a womb’ that extends to infinity in time). Humans are, therefore, born with empathy at all times;
3. Al-Malik (literally means ‘the owner of everything’). Humans are, therefore, born with one item that they have full control over. This happens to be intention. It is logical, because first hadith of Book of Bokhari confirms, we'll be judged by our intention. Now, does this ownership risk violating universal order? No. Intention has no continuity with anyone other than the individual whose intention is in question. So, what it does is gives people the freedom to intention, without disturbing the universal order, thereby holding him responsible for the intention that he had full control over;
4. Qur'an names a total of 99 such traits of the Creator and asserts that humans are created with those qualities so they are prepared to be the viceroy of the creator.

It was mentioned earlier that the most important feature of humans is their freedom to make intention. A true intention indeed involves consciously seeking guidance, followed by seeking knowledge in order to be aware of the duties to be discharged. Both the Qur'an and book of Hadith are clear about this obligation to seek knowledge through scientific cognition.<sup>24</sup>

## 6 Scientific Cognition Based on the Absolute Set of Fundamental Premises

The essence of Section 5 is that a set of fundamental premises make it possible for humans to

cognize on their own and discharge their duty as the viceroy of the Creator. This process is the most important step before any action can take place. The most famous Hadith states static (original) intention (*niyah*) to be the source of all actions and accountability and ask followers to optimize dynamic intention (*qsd*), in line with *niyah* and *niyah* in line with his role as a *khalifah* (viceroy). Prophet Muhammad said that the “cure to ignorance is to question.”

This cognition model was introduced by the Prophet Muhammad and subsequently forming the core of Islamic socio-political and justice system. Note that this model was not formally recognized as a branch of education, as compartmentalization of knowledge wasn't introduced yet. The very first educational institutions of the Prophet Muhammad's movement were quite informal. Mosques were used as a meeting place where people can gather around an Islamic leader (e.g. prophet, his rightly guided Caliphs), attend Friday 'state of the Union' lectures, study the Qur'an, and gain knowledge on every subject of practical relevance, always focusing on the purpose of humankind. This tradition continued even after the Rashedun Caliphate ended and autocratic rule was introduced in violation of Islamic rule. Some of the greatest scholars of Islam learned in such a way, and taught their students this way as well. This science of knowledge gathering continued over 1000 years subsequent to the dismantling of Rashedun Caliphate. During this period, there was an unprecedented rise in achievements that encompass a wide range of subject areas; most notably Mathematics, Astronomy, Medicine, Physics, Alchemy and chemistry, Cosmology, Ophthalmology, Geography and cartography, Sociology and Psychology. Outside of the dogma infested Europe as well as Islamic society, the sciences, which included philosophy, were viewed holistically. The individual scientific disciplines were approached in terms of their relationships to each other and the whole, as if they were branches of a tree. In this regard, the most important scientists of Islamic civilization have been the polymaths, known as *hakim* or doctors. Their role in the transmission of the sciences was central. The *hakim* was most often a poet and a writer, skilled in the practice of medicine as well as astronomy and mathematics. These multi-talented sages, the central figures in Islamic science, elaborated and personified the unity of the sciences. They orchestrated scientific development through their insights, and excelled in their explorations as well. Today, it's widely recognized that Ibn Sina (Avecina) is the father of modern medicine and alchemy, Ibn Rushd (Averroës) the father of secular philosophy and Education, Ibn Haitham (Alhazen) the father of modern optics, Al-Kindi (Alkindus)- father of information processing, Ibn Khaldoun - father of modern social sciences, Al-Khwārizmī the founding father of algebra and mathematics, and Al-Farabi named the father of epistemology and metaphysics. How did those people of the medieval age could garner such a feat? It was because they used Islamic cognition tool even outside of political Islam.

Ironically, Averroës introduced this very model in Europe and yet he is known as 'the father of secular philosophy' in Europe. In other part of the world, this knowledge model is known as the Islamic model. Prophet Muhammad's teaching style and the education system he instituted has been studied in great details. Islam et al.<sup>25</sup> summarized the scientific cognition process adopted by Islamic scholars for some 1000 years, during which these scholars excelled in all

aspect of scholarship. It can be summarized in the following:

1. Start off with the Major premise: There is no *Ilah* (someone worthy of being obsessed with) except Allah and the Minor premise: Muhammad is the messenger of Allah.
2. Memorize the Qur'an (Quran being 100% from Allah and 100% in its original form). Start each deduction (*Iqra*) from the Qur'an (as per Qur'an 96:1). This forms the axiom.
3. Use Hadith (Books of Hadith are preserved for some 1200 years) to form an axis in order to time-scale (*qias*) to any time or époque of interest.
4. Use stories of the past as recounted in the Qur'an or in the book of Hadith as case laws.
5. By inference, use 'rightly guided' Caliphs as the other case laws.

Islam<sup>26</sup> pointed out that Averroës, like all other Islamic scholars, understood the value of scientific cognition that starts with the Qur'an. For every verse of the Qur'an there are contextual Hadiths, forming yet another axis of acceptable or permissible lifestyle. Once again, the deduction axis remains the same, as depicted in Figure 4. This graph is not reversible or the sequence is not exchangeable. For instance, if one starts with Hadith to fit the desired conclusion, it creates misplacement of cognition process. Such misplacement is the core meaning of the word *Dhulm* that is usually translated as 'oppression'.

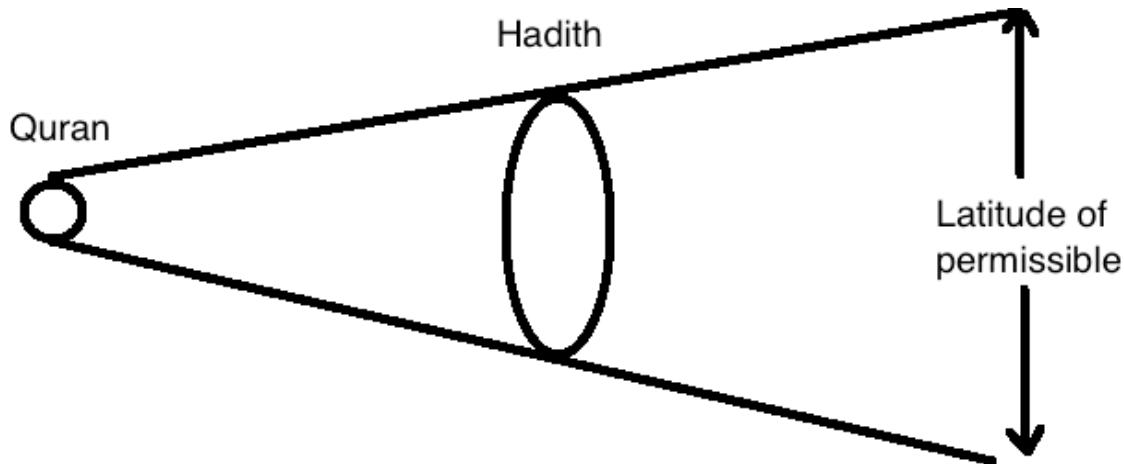


Figure 4. Cognition starts with the Quran, then time scaling is performed by putting in the context of contextual hadiths

Khan and Islam<sup>27</sup> showed that the above graph (Figure 4) is equally applicable to Figure 5. They used the premise 'Nature is perfect', thereby, placing natural phenomena in the place of Qur'anic verses. By placing sustainable lifestyle in the context of idealization, Figure 5 shows a set of permissible practices. Both figures show the existence of multiple practices or interpretations all of which are acceptable, as long as the intention of cognition is to conform with the truth. It is so because they satisfy all three requirements of phenomenal deduction

procedure, outlined in previous sections. The latitude of permissible is valid only for individuals that started the cognition with a good intention.

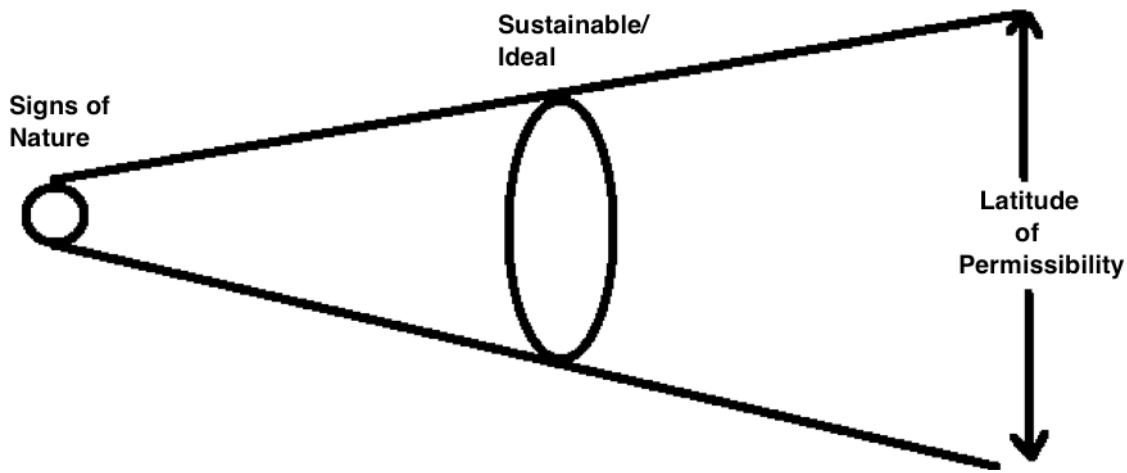


Figure 5. Requirements of sustainable technology development is similar to Islamic cognition.

The true scientific cognition process is summarized in the following five stages:

- **Major premise:** Must be a phenomenal premise, in conformance of natural phenomena;
- **Acceptance** of the scientific process of cognition
- **Making the intention** to conform with long-term interest (this one is in line with the definition of sustainability)
- **Modelization** of a society that adopted dogma free cognition
- **Use caselaws** from the model society

The cognition process may best be comprehended as a five-point cycle set out below, it being understood that humans' primary purpose is to be in conformance of universal order, according to which the seeking of knowledge is obligatory:

- cognition starts with a real question that has only Yes (1,+) or No (0,-) answer.
- make original intention (*niyah* in Arabic) to start the cognition process solely in search of the truth so a right decision is made at the end of the cognition process;
- collect all available data and filter out questionable sources;
- fuzzy logic (*Manteq* in Arabic) phase: ask questions of dialectical nature that will have qualitative answer (by collecting a series of yes/no answers). Each *manteq* questions should be motivated by *qsd* (dynamic intention) that is in line with *niyah*; and
- logic (*aql* in Arabic) phase: Ask the final question to determine the yes/no answer to the question asked in Point 1.

This five-point process constitutes the essence of ‘seeking knowledge’, something that is obligatory in Islam. A Hadith of prophet Muhammad clearly states: “It is obligatory for each Muslim man and woman to seek knowledge.” Then the prophet qualified the knowledge as, “Whoever learns a knowledge should be used to seek the purpose of Allah ‘azzawajal and does not learn it except in aspiration of the world, he will not meet (with) the fragrance of paradise on the day of resurrection.” So, there is no value to knowledge that doesn’t start with good intention. In other word, it is obligatory to seek knowledge in order to please the Creator or to conform with universal order (*qadr* in Arabic).

When it comes to collecting and disseminating knowledge, this active seeking of knowledge is of utmost importance. For the first time in history, knowledge-gathering, knowledge-based practice and knowledge dissemination became an obligation from the moral as well as the practical point of view. Where does the knowledge gathering process start? By asking questions to which one does not yet have an answer. In scientific cognition, this is the most important aspect of research. In Islam, this is mandatory.<sup>28</sup>

As shown in Figure 6, the Prophet Muhammad formalized the cognition process that remains unparalleled today. It should be noted that conducting research is synonymous to seeking knowledge, which is obligatory in Islam.

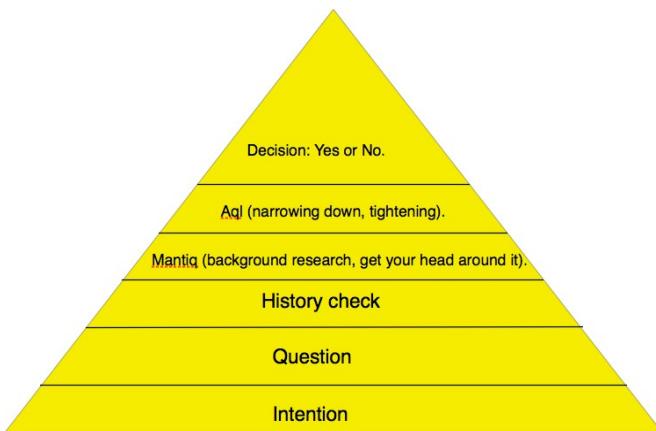


Figure 6. Decision-making in Islamic jurisprudence.

The original education system meant increasing knowledge, whereas the current system means increasing tangible benefits, often associated with increased ignorance. Throughout ancient history, every nation had some form of pure logic, ranging from ancient Greek to ancient Indian, from ancient Chinese to Mayan. Contrast that with today’s education system. Similar to what happened in science and engineering, education system is non-functional (Table 4).

Sustainable (Natural)	Unsustainable (Artificial)	Current Education system (Bryner 2007)
Progressive/ synergy	Non-progressive/ resists change	<2%, never bored >66%, bored everyday 75% bored because the material presented isn't interesting
Unlimited adaptability and flexibility	Zero-adaptability and inflexible	70% of the students want less homework, even though they spend only 1 hour/ week on homeworks
Increasingly self evident with time	Increasingly difficult to cover up aphenomenal source	100% theories are proven wrong, it's only a matter of time (Khan and Islam, 2012)
100% efficient	Efficiency approaches zero as processing is increased	5% retention of lecture (Cantor, 2001)
Can never be proven to be unsustainable	Unsustainability unravels itself with time	Every technique has become unsustainable (Chhetri and Islam, 2008)

Table 4. How the Education system has been rendered artificial (from Islam et al., 2013).

## 7 Immediate outcome of the truly scientific cognition: Some examples

There will be no paradox if the first premise is correct and it is followed by continuous logical pursuit, in line with the overall broad phenomenal intention. If the first premise is false, either because of 'belief' in a theory with aphenomenal assumptions or an intention that has an ulterior motive (e.g. other than seeking the truth). This point is made in Figure 7.

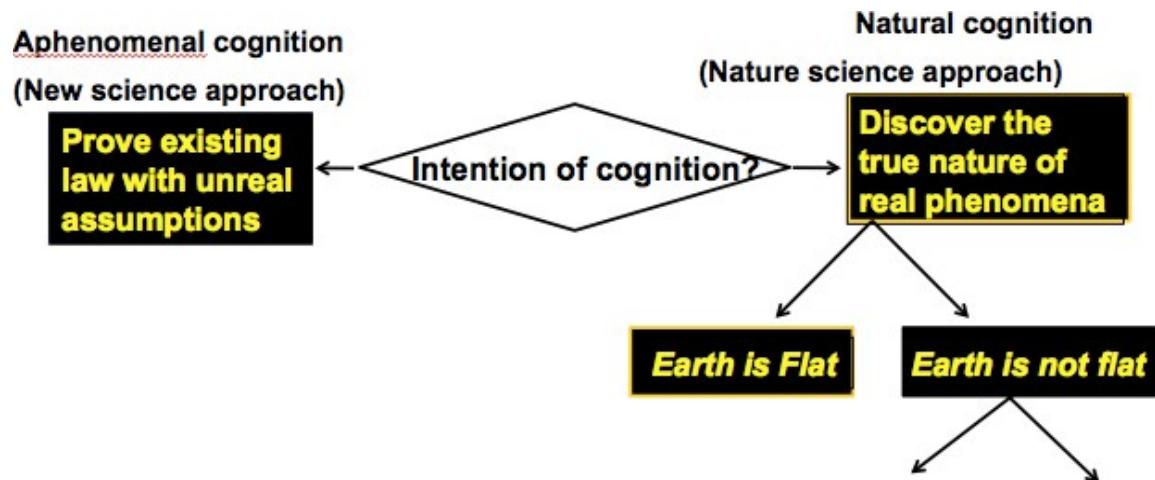


Figure 7. Cognition becomes aphenomenal either with false first premise or false original intention.

Consider the example of the case of Earth itself. In Ibn Kordathyah, an Arab scientist mentioned the earth is not flat in his early books Al-Masalik and Al-Mamlik in the 800s. So, what shape did he think the earth was? It is the word ‘baidh’ or ‘baidha’. In the modern Europe-dominated word, it is translated as “elliptical”. In reality, an ellipse is an aphenomenal shape, meaning it doesn’t exist anywhere in nature. The true meaning of this word is “Ostrich’s egg” or its nest, which, obviously, is not elliptical, but ovoid. The inspiration of Ibn Kordathyah came from the Qu’ran (Chapter 79, verse 30). Contrast this with western “science,” for which the starting point would be the outline circumference of a circle rendered as an ellipse that has “degenerated” into some kind of ovoid. Then the egg is elaborated as an extrusion into 3-D of a particular case or class of a non-spherical somewhat ellipsoidal circumference. Why not just start with the egg itself, instead of with circles and ellipses? Eggs are concrete, demonstrative example. We can know all their properties directly, including everything important to know about the strength and resilience of its shape as a container for its particular contents, without having to assume some simple ideal and then extrapolate everything about it and an egg from abstractions that exist solely in someone’s imagination. Going the other direction, on the other hand, is the much richer scientific path. Once we have explored real eggs and generalized everything we find out, we can anticipate meaningfully what will happen in the relations between the form of other exterior surfaces found in nature and their interior contents.

With the nature science approach, scientists knew 1200 years ago the earth is neither flat nor spherical and has a perimeter of 40,252 kilometres (today, we know it to be 40,075 km).<sup>29</sup> Consider another example. Islam et al. (2013) presented a study of human embryology that exemplifies an especially masterful approach taken to using contemporary research findings in the highly specialized field known as embryology to illuminate previously inaccessible meanings of key passages from the Holy Qur’ān. Picture 4 shows how various stages of embryonic development could be unraveled only in late the 20<sup>th</sup> century, whereas were known to Medieval Islamic scientists that those pictures as part of the description in the Qu’ān. Such starting point led them to become ‘father’ of respective fields of science and social science.

Contrast the above cognition with the so-called Evolution theory. Let’s evaluate the validity of Charles Darwin’s evolution theory. Following is an excerpt from the *The Telegraph*:<sup>30</sup>

Next year, we will be celebrating the 200th anniversary of Charles Darwin’s birth, and the 150th of the publication of his *On The Origin of Species*, which revolutionised our understanding of biology...But what if Darwin was beaten to the punch? Approximately 1,000 years before the British naturalist published his theory of

evolution, a scientist working in Baghdad was thinking along similar lines... In the Book of Animals, Abu Uthman al-Jahith (781–869), an intellectual of East African descent, was the first to speculate on the influence of the environment on species. He wrote: "Animals engage in a struggle for existence; for resources, to avoid being eaten and to breed. Environmental factors influence organisms to develop new characteristics to ensure survival, thus transforming into new species. Animals that survive to breed can pass on their successful characteristics to offspring."

At the outset, it would seem like Al-Jahith had written Darwin's theory some 1000 years before Darwin, similar to the work of Ibn-Khaldoun whose social theories are strikingly similar to those of Karl Marx. Could it be taken as evidence that intention or original premise does not matter? An objective review is necessary before answering this question.

History tells us that Al-Jahiz and Ibn-Khaldoun both had Qu'ran as the original premise, similar to Averroës and numerous other contemporary scholars. Al-Jahiz was the author of many books; *Kitab al-Hayawan* (The book of Animals) is one of his famous work. It is an encyclopedia of seven volumes of poetic descriptions of varieties of animals. He was the first person who studied the influence of the environment on animals. The fact stops here. The rest of the commentary, such as below, are nothing but matching Darwinism with Al-Jahith's nature science work:

Al-Jahith considered the effects of the environment on the likelihood of an animal to survive, and thus he became the first person to describe the struggle for existence. His idea on the struggle for existence is not very different from Darwin's idea on this subject. In the Book of Animals he has summarized it like this; Animals engage in a struggle for existence; for resources, to avoid being eaten and to breed. Environmental factors influence organisms to develop new characteristics to ensure survival, thus transforming into new species. Animals that survive to breed can pass on their successful characteristics to offspring.

What we know about him is that he was poor and studied Quran and Hadith at early age. It would mean he was motivated by inherent desire to increase his knowledge as required in Islamic faith. He had no illusion about the purpose of life and the role of animals in the lives of humans. Why is it important to study the role of environment? It is because the Quran is very clear as to the role of the human who must ensure a clean environment because any 'pollution' is tantamount to 'corruption' (*Fassad*). It certainly was not based on the aphenomenal theory of evolution that puts dogmatic assertion about the onset of a new species. Yet, the connection was later made by even those that sympathize with Islamic faith (Dargan, 2006). Another observation of Al-Jahiz was that animals depended on each other as each formed a section of the food chain. According to them, humans are not any different in that 'aspect'. This simple notion of harmony and humanization of the environment was well known in the Native American community. They were no Darwinists, nor were they Creationists. It is no surprise that Darwinists as well as Creationists have used this connection alike and they are both

wrong. Figure 8 clarifies this point. To clarify, it is not to say that the Qur'an or Hadith are to be considered a fact-book of all knowledge. Rather, these two points serve as starting points in a consistent process of logical deduction.

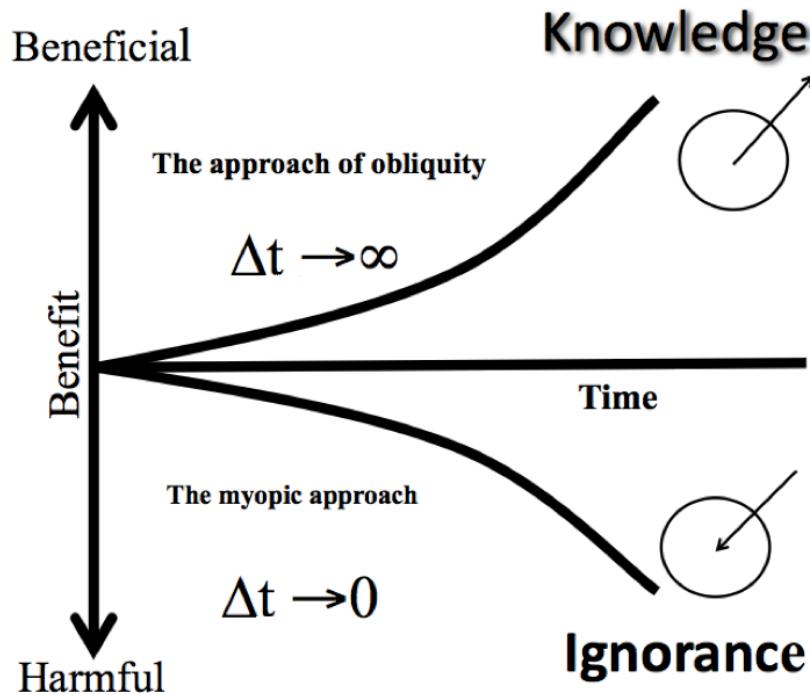


Figure 8. Approach of obliquity is the essence of truly scientific cognition.

## 8 What Logical Assumptions are we to Take?

Table 5 summarizes the historical development in terms of scientific criterion, origin, pathway and consequences of the principal cultural approaches to reckoning, and reconciling, the tangible-intangible nexus.

Table 5. Criterion, origin, pathway and end of scientific methods in some of the leading civilizations of world history

People	Criterion	Origin	Pathway	End
Zatzman and Islam (2007)	$\Delta t \neq \infty$	Intention	$f(t)$	Consequences

Khan (2006)	$\Delta t \neq \infty$	Intention	Natural	Sustainability
(Zatzman and Islam, 2007a)	$\Delta t \neq \infty$	Intention	Natural	Natural (used $\Delta t \neq \infty$ to validate intention)
Einstein	$t$ as 4 <sup>th</sup> -D	“God does not play dice...”	Natural	N/A
Newton	$\Delta t \neq 0$	“external force” (1 <sup>st</sup> Law)	No difference between natural & artificial	Universe will run down like a clock
Aquinas	Bible	Acceptance of Divine Order	All <i>knowledge &amp; truth</i> reside in God; <i>choice</i> resides with Man	Heaven and Hell
Averröes	Al- Furqan <small>الْفُرْقَانُ</small> (meaning The Criterion, title of Chapter 25 of The Qur'an) stands for Qur'an	Intention (first <i>hadith</i> )	<i>Amal saliha</i> (good deed, depending on good intention)	Accomplished (as in <i>Muflehoon</i> , 2:5, حُوَّنَ أَنْجَلُ مَلَكٌ), Good (+∞) Losers (as in <i>Khasheroon</i> , رُوَسَّانٌ 58:19), Evil (-∞)
Aristotle	<i>A</i> or <i>not-A</i> ( $\Delta t=0$ )	Natural law	Natural or artificial agency	<i>Eudaimonia</i> ( <i>Eudaimonia</i> , tr. “happiness”, actually more like “Man in harmony with universe”)

Ancient India	Serving others ; “w o r l d r e v e a l s i t s e l f ”	Inspiratio n ( <i>Chetna</i> )	<i>Karma</i> ( deed w i t h inspiration, <i>chetna</i> )	K a r m a , s a l v a t i o n through merger with Creator
Ancient Greek (pre-Socratics)	<i>t b e g i n s w h e n C h a o s o f t h e v o i d e n d e d</i>	the Gods can i n t e r r u p t h u m a n intention at any time or place	N/A	N/A
Ancient China (Confucius)	N/A	Kindness	Q u i e t (intangible?)	Balance

What we can determine, keeping in mind the scope of this paper, is identifying the contrast between two starkly dissimilar pathways of cognition ( $\Delta t=\infty$  and  $\Delta t=0$ ). From what we know from existing literature and history of our civilization, before the rise of Islam in the 7<sup>th</sup> century, no social order or ideology encouraged or supported the idea that the individual has a moral *and* existential responsibility to increase his knowledge. Even though it has long been recognized that the thirst for knowledge is inherent to being a human and as stimulating as opium,<sup>31</sup> the notion of seeking knowledge as an individual obligation is uniquely related to Islam and the teachings by Quran and the traditions of Prophet Muhammad. In western society, this is an ideal that is paid much lip-service, but not taking up such a responsibility carries no downside, thus trivializing the aim. As a result, what we have is redefinition of a scientific oscillation in knowledge cycle (Figure 9) to a self serving narration of history that launched the civilization into a spiraling down mode. Different starting points of logical derivation (i.e. different premises) result in different outcomes: true cognition results in morally-justified actions, and false cognition (by definition) results in moral degeneration.

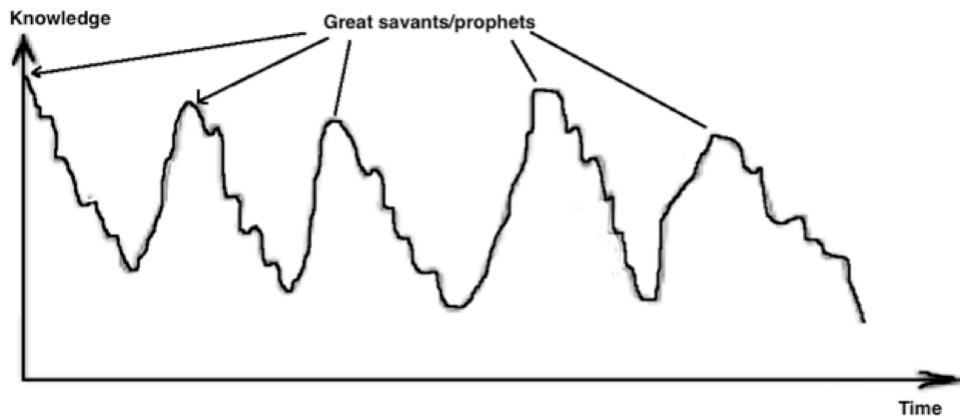


Figure 9. Throughout history logic has been taken to heights by great savants and prophets (modified from Islam et al., 2013b).

## 9 Summary and Conclusion

This paper brings back the fundamental question of what constitutes the truth. Looking at historical narration dating back to ancient civilizations, it is discovered that truth cannot be a function of time. For instance, if the same system determined that a person is a heretic and then later determined he was a saint, it simply means the system is inherently corrupt. Today, we haven't made much progress about defining what is true and what is falsehood, but we have certainly added a lot of arrogance to our mindset.

In this paper, key questions answered are: Is there any law that has moral justification? Is there any morality without fundamentally correct premises? If so, what makes the law uniquely necessary and sufficient?

In absence of universal and external criterion, there is no meaning of the word 'moral compass', 'natural justice', or other related words. This paper establishes the need of an external criterion, then defines moral and natural on more concrete terms.

At the same time, this paper debunks the fraud of false premise-based. It recounts how the 'enlightenment' phase of European history made the entire process of fulfilling purpose of life travel further down the degradation route, called the HSSA (Honey-Sugar-Saccharine-Aspartame) degradation mode. The original purpose of life was perverted by the Roman Catholic church to be 'salvation through Jesus' – a dogma the post 'enlightenment' replaced with replaced by notions of inalienable natural rights and the potentialities of reason, and universal ideals of love and compassion gave way to civic notions of freedom, equality, and citizenship. There the definition of 'natural' and 'universal' remained arbitrary, devoid of any reasoning of logical thought (i.e. sound logical derivation). That made these notions of 'freedom, equality, and citizenship' more dogmatic and original dogma itself.

Based on the logic that truth should have a true basis, continuous in time, and have true

criterion, authors present a consistent and comprehensive tool for answering the question: What is true?

The paper concludes that

1. The current socio-political system is inherently dogmatic due to the absence of a universal and time honored standard and criterion of truth
2. The scientifically correct cognition must start with fundamentally sound major and minor premises
3. With the correct set of premises, there is a paradigm shift in all aspects of scientific cognition
4. Any policy based on this truly scientific cognition will become the impetus of a social revolution, leading to fundamental change in direction in our civilization
5. Unless the scientific cognition process is followed, all laws and systems are inherently dogmatic, hence unlawful in terms of true universalism.

## Notes

<sup>1</sup> M.R. Islam, A. O. Islam, Garry Zatzman, "A theory of Humanity- Part 1—Methodology and the 'Ideal life,'" *International Journal of Political Theory*, vol. 1, issue 1 (2016).

<sup>2</sup> On August 3, 2016, Washington Post reports a survey that Trump and Clinton are tied as least honest (according to 36% surveyed) and most non-trustworthy (according to 61% for Clinton and 62% for Trump) duo ever to run for the office of US President.

<sup>3</sup> Frank Lavin, Reagan Republican: Trump is the emperor with no clothes, *CNN*, Aug. 7, 2016.

<sup>4</sup> M.I. Khan, "Towards Sustainability in Offshore Oil and Gas Operations" (Ph.D. Dissertation, Faculty of Engineering, Dalhousie University, 2006).

<sup>5</sup> G.M. Zatzman, M.M. Khan, A.B. Chhetri, and M.R. Islam, A Delinearized History of Time and Its Roles in Establishing and Unfolding Knowledge of the Truth, *J. Nature Science and Sustainable Technology*, vol. 1, no. 4 (2007): 489-533.

<sup>6</sup> Garry M. Zatzman and Rafiqul Islam, *Economics of Intangibles*, New York: Nova Science Publishers, 2007.

<sup>7</sup> M.R. Islam et al., "A Theory of Humanity", 2016.

<sup>8</sup> A. B. Chhetri and M.R. Islam, *Inherently Sustainable Technology Developments* (New York: Nova Science Publishers, 2008).

<sup>9</sup> Pasquale Porro, *Thomas Aquinas* (Washington D.C.: Catholic University of America Press, 2016), 63.

<sup>10</sup> See, for instance: Jaan S. Islam, *True Islam, Jihad, and Terrorism, The Science of Islamic Foreign Policy* (NY: Love Publishers, 2016), ch. 3; Jaan S. Islam, *Political Philosophy in the East and West: In Search of Truth* (Wilmington, DE: Vernon Press, forthcoming), ch. 4.

<sup>11</sup> Jaan Islam, "Contrasting Political Theory in the East and West: Ibn Khaldun versus Hobbes and Locke," *Int. J. Pol. Theory*, vol. 1, issue 1.

<sup>12</sup> Ryan Grenoble, Atheist Group Files Suit To Remove 'In God We Trust' From Currency, *Huffington Post*, Jan. 15, 2016.

<sup>13</sup> M. Rafiqul Islam, *Unconventional Gas Engineering*, New York, Amesterdam: Elsevier.

<sup>14</sup> M.R. Islam, J.S. Islam, G.M. Mughal, M.A.H., Rahman, M.S., Zatzman, G.M., *The Greening of Pharmaceutical Engineering, Volume 1: Practice, Analysis, and Methodology* (New York: Scrivener-Wiley, 2015).

<sup>15</sup> Ibid.

<sup>16</sup> M.R. Islam, J.S. Islam, G.M. Zatzman, M.S. Rahman and M.M. Khan, "God, God's Particle, God's Wrath and Force of Nature: Delinearized History of Mass, Energy and Time", *Adv. Sust. Pet. Eng. Sci.*, vol. 6, issue 4 (2014).

<sup>17</sup> Gary Zatzman and Rafiqul Islam, *Economics of Instangibles*, 2007.

<sup>18</sup> This word is erroneously translated as 'read'. Prophet Muhammad did not know how to read or write.

<sup>19</sup> M.R. Islam, J.S. Islam, G.M. Mughal, M.A.H., Rahman, M.S., Zatzman, G.M., *The Greening of Pharmaceutical Engineering, Volume 2: Theories and Solutions* (New York: Scrivener-Wiley, 2016).

<sup>20</sup> Jaan Islam, “Contrasting Political Theory in the East and West,” 2016.

<sup>21</sup> M.R. Islam et al., “God, God’s Particle, God’s Wrath and Force of Nature,” 2014.

<sup>22</sup> Jaan Islam, “Contrasting Political Theory in the East and West,” 2016.

<sup>23</sup> Qur'an 2:5 gives these as the criteria for success.

<sup>24</sup> Consider the following passages: “Deduce (*iqra*) In the trait (*ithm*) of thy Lord who created man from a clot. Recite: And thy Lord is the Most Generous Who taught science (*ilm*) by the pen, taught man that which he knew not.” (Quran, 96:1-5); “And they shall say had we but listened or used reason (*aql*), we would not be among the inmates of the burning fire.” (Quran, 67:10); “Are those who cognize scientifically (*ilm*) and those who don’t alike? Only the men of understanding (*ulul albab*<sup>24</sup>) are mindful. ” (Quran, 39:9); “And whoso delivers the truth and truly believes in the truth (*saddaqa*) such are the righteous.” (Quran, 39:33); Every Muslim man’s and every Muslim woman’s prayer should be: “My Lord! Increase my knowledge (*ilm*).” (Quran, 20:114); “The acquisition of knowledge (*ilm*) is compulsory for every Muslim, whether male or female.” [Sunan Ibn Mâjah (224) and others] “Whoever seeks a way to acquire knowledge Allah will make easy his way to Paradise.” [Sahîh Muslim (2699)].

<sup>25</sup> M.R. Islam, G.M. Zatzman, Jaan S. Islam, *Reconstituting the Curriculum* (New York: Scrivener-Wiley, 2013).

<sup>26</sup> Jaan Islam, *True Islam, Jihad, and Terrorism*, 2016.

<sup>27</sup> M. R. Islam et al., *Reconstituting the Curriculum*, 2013.

<sup>28</sup> It is said the only reasons someone doesn’t ask questions are the excessive arrogance of the ‘know-it-all,’ or a preoccupation with false pride, e.g., fear that the person being asked will think less of the questioner. Arrogance and false pride are also the first sins attributed to Satan, the jinn endowed with the same freedom of choice as humans.

<sup>29</sup> M. R. Islam et al., *Reconstituting the Curriculum*, 2013.

<sup>30</sup> Jim Al-Khalili, “Science: Islam’s Forgotten Geniuses,” The Telegraph, Jan. 8, 2008.

<sup>31</sup> EuorekAlert, 2006, [http://www.eurekalert.org/pub\\_releases/2006-06/uosc-fk062006.php](http://www.eurekalert.org/pub_releases/2006-06/uosc-fk062006.php)